112-294

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. ~~3[illegible]1~~. 69

AUGUST HEIDRITTER, PLAINTIFF IN ERROR.

vs.

THE ELIZABETH OIL CLOTH COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

FILED OCTOBER 11, 1881.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 381.

AUGUST HEIDRITTER, PLAINTIFF IN ERROR,

vs.

THE ELIZABETH OIL CLOTH COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

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1 *Order Substituting Attorney.*

Circuit Court of the United States, District of New Jersey.

AUGUST HIEDRITTER
vs.
THE ELIZABETH OIL CLOTH COMPANY. } In Ejectment.

It is on this nineteenth day of May, A. D. 1881, ordered John W. Taylor be substituted as attorney for the plaintiff in the above-entitled action in the place and stead of Edward A. Day.

JNO. T. NIXON, JR.

I hereby consent to the above order substituting John W. Taylor attorney in my place in the above-entitled cause.

EDWARD A. DAY.

(Endorsed:) Circuit court of the United States, district of New Jersey. August Heidritter *vs.* The Elizabeth Oil Cloth Company. In ejectment. Order substituting attorney. John W. Taylor, att'y. Filed May 19, 1881. S. D. Oliphant, clerk.

2 *Bond.*

Supreme Court of the United States.

AUGUST HEIDRITTER, Plaintiff in Error,
vs.
THE ELIZABETH OIL CLOTH COMPANY, Defendant in Error. } In Ejectment.

Know all men by these presents that we, August Heidritter, Frederick L. Heidritter, and August Heidritter, junior, of the city of Elizabeth, in the county of Union, and State of New Jersey, are held and firmly bound unto the Elizabeth Oil Cloth Company, a corporation existing under the laws of the State of New Jersey, in the sum of five hundred dollars, to be paid to the said The Elizabeth Oil Cloth Company, its successors or assigns, to which payment well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents.

3 Sealed with our seals. Dated this twenty-ninth day of April, A. D. 1881.

Whereas the above-named August Heidritter hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States, for the district of New Jersey.

Now, therefore, the condition of this obligation is such that if the above-named August Heidritter shall prosecute his said writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

A. HEIDRITTER. [L. S.]
FREDERICK L. HEIDRITTER. [L. S.]
AUGUST HEIDRITTER, JR. [L. S.]

Sealed and delivered in presence of—
[L. S.] HOWARD RICHARDS,
United States Commissioner for New Jersey.

DISTRICT OF NEW JERSEY, *ss:*

4 Frederick L. Heidritter and August Heidritter, junior, of the city of Elizabeth, being duly sworn, depose and say, each for himself, that he is worth the sum of five thousand dollars over and above all his just debts and liabilities.

FREDERICK L. HEIDRITTER.
AUGUST HEIDRITTER, JR.

Sworn to this 29th day of April, A. D. 1881.
[L. S.] HOWARD RICHARDS,
United States Commissioner for New Jersey.

(Endorsed:) Supreme Court of the United States. August Heidritter, pl't'ff in error, *vs.* The Elizabeth Oil Cloth Company, def't in error. In ejectment. Bond for damages and costs. John W. Taylor, att'y. Approved May 19, 1881. Jno. T. Nixon.

5 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the Circuit Court of the United States for the District of New Jersey, Greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea, which is in the said circuit court before you, between August Heidritter and The Elizabeth Oil Cloth Company, a manifest error hath happened to the great damage of the said August Heidritter, as by his complaint appears, we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein
5½ to correct that what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court, the nineteenth day of May, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] S. D. OLIPHANT, *Clerk.*
JOHN W. TAYLOR, *Att'y.*

Endorsed: United States Supreme Court. August Heidritter, pl'ff in error, *vs.* The Elizabeth Oil Cloth Company, def't in error. In ejectment. Writ of error to the U. S. circuit court for the district of New Jersey. Ret'ble 2d Monday of Oct., 1881. —, Att'y for pl'ff in error. Allowed. Jno. T. Nixon, J.

6 UNITED STATES OF AMERICA, *ss:*

To The Elizabeth Oil Cloth Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United for the district of New Jersey, wherein August Heidritter is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this nineteenth day of May, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] JNO. T. NIXON, *District Judge.*

6½ Endorsed: United States Supreme Court. August Heidritter, pl'ff in error, *vs.* The Elizabeth Oil Cloth Company, def't in error. In ejectment. Citation. John W. Taylor, att'y for pl'ff in error. Service acknowledged May 19th, 1881. Wm. R. Wilson, att'y for def't., &c. Filed May 19, 1881. S. D. Oliphant, clerk.

7 *Judgment on Verdict.*

United States Circuit Court, District of New Jersey.

AUGUST HEIDRITTER
vs.
THE ELIZABETH OIL CLOTH COMPANY. } In Ejectment.

Edward A. Day, attorney as yet of the twenty-fourth day of February, A. D. eighteen hundred and seventy-nine. John T. Nixon, esquire, judge; witness, S. D. Oliphant, clerk.

DISTRICT OF NEW JERSEY, *ss.:*

August Heidritter, the plaintiff in this action, by Edward A Day, his attorney, demands of the Elizabeth Oil Cloth Company, the defendant therein, the possession of a tract of land with the appurtenances, situated in the city of Elizabeth, in the county of Union and district aforesaid, more particularly described as follows, to wit: Beginning at the corner formed by the intersection of the northerly side of Butler street with the westerly side of Second avenue, thence northwesterly along said side of Second avenue two
8 hundred feet to the southerly side of Second street, thence southwesterly along said side of Second street one hundred feet to land now or late of E. G. Brown, thence southeasterly parallel with Second avenue two hundred feet to said side of Butler street one hundred feet, to the place of beginning.

And the plaintiff says that his right to the possession of the same accrued on the 1st day of December, eighteen hundred and seventy-three, and that the defendants wrongfully deprive him of the possession thereof to his damage five thousand dollars.

And the said, the Elizabeth Oil Cloth Company, by W. R. Wilson, its attorney, appears and defends this action, and says that it is not guilty of the injury whereof the said August Heidritter hath complained in his declaration, nor of any part thereof, and of this it puts itself upon the country, and the said August Heidritter doth the like.

9 Afterwards, to wit, on the 23d day of March, 1880, the parties aforesaid, by their attorneys aforesaid, waived a jury for the trial of the issues in above cause by consent in writing filed with the clerk of said court, of which the following is a copy:

U. S. Circuit Court, District of New Jersey.

August Heidritter
vs.
The Elizabeth Oil Cloth Company. } In Ejectment.

Consent is hereby given that the above case be tried before the court without a jury, and the same be set down for trial for some day certain, and on or about April 21, 1880.

March 23d, 1880.

EDWARD A. DAY,
Pl'ff' Att'y.
W. R. WILSON,
Def't's Att'y.

(Endorsed:) U. S. Circuit C't., Dist. of N. J. August Heidritter *vs.* The Elizabeth Oil Cloth Company. In ejectment. Consent. Edward A. Day, att'y. Filed Apr. 1, 1880. S. D. Oliphant, clerk.

10 Afterwards, that is to say, on the fifth day of May, in the year eighteen hundred and eighty, in the term of March, eighteen hundred and eighty, before the Honorable John T. Nixon, a judge of said circuit court, at Trenton, in said circuit, came as well the within named August Heidritter, as the within named The Elizabeth Oil Cloth Company, by their respective attorneys within named, and produce before the said judge their respective witnesses, documents, and proofs upon the said issues, and the said court having heard the same, and the arguments of counsel thereon, retains the cause for advisement, and on the fifth day of March, eighteen hundred and eighty-one, the following finding of facts was made and filed by the court as the result of the evidence offered upon the trial of said issues.

11 United States Circuit Court, District of New Jersey.

AUGUST HEIDRITTER
vs.
THE ELIZABETH OIL CLOTH COMPANY.
} In Ejectment.

In this action, tried before the court, the parties having formally waived a jury, I make and file the following findings of fact and conclusion of law thereupon:

Findings of Fact.

I find as facts in this case:

1. That the premises in controversy, being the property of one Edward G. Brown, were transferred by the said Brown to Charles L. Sicher by deed of conveyance, bearing date on the 20th August 1872.

2. That the premises were occupied and used by the said Sicher as a distillery, and were seized by the revenue officers of the United States on the 24th of January, 1873, for alleged violations ot the revenue laws of the United States.

12 3. That an information was filed by the United States against the said real estate, *interalia*, on the 4th of February, 1873, and a decree of condemnation was entered by default in the district court of the United States for the district of New Jersey on the 25th of February, 1873; that a sale thereof took place on the 22d of May following, when the said Edward G. Brown became the purchaser for the consideration of fifteen hundred dollars, and that a conveyance was executed and delivered to the purchaser for the said premises on the 29th of May, 1873.

4. That Edward G. Brown sold and conveyed the same to the Eastern Manufacturing Company on or about December 17, 1874, and that the defendant corporation claims title by sundry mesne conveyances since that date.

I further find as facts in the case:

5. That while the said Charles L. Sicher had the possession of the said premises and before he received a deed therefor, to wit, on the 25th of June, 1872, he commenced the erection of a building thereon.

13 6. That on the 21st of February, 1873, the plaintiff, Heidritter, filed a claim in the clerks office of the county of Union for $1,711.22 for materials furnished in the erection of said building from June 21 to August 23, 1872; that on the same day he caused to be issued a summons on said claim, and that on the 14th of June following a judgment was entered thereon in the circuit court of the county of Union.

7. That on the 13th of March, 1873, one Ferdinand Blancke filed another mechanics lien claim in the same office for $264.35 for materials furnished for the same building from September 7th to December 30th, 1872; that a summons was issued thereon March 15th, and final judgment entered June 18, 1873.

8. That on the 24th of September, 1873, the premises in

controversy were sold by the sheriff of the county of Union, under these lien judgments to the plaintiff in this suit, for the consideration of one hundred dollars, and a deed duly executed to him therefor. That when the said lien claims were filed, and the proceedings in the State court were had under them the United States were in the possession of the premises by its officers and held the same until the condemnation and sale, and that the United States were not made a party to the said lien proceedings, nor did the lien claimants appear in the proceedings of condemnation in the United States district court; that both parties claim title to the land in dispute, thro' Charles L. Sicher, the defendant, under and thro' a deed from the United States marshal, given upon a sale of the property under a decree of forfeiture and condemnation to the use of the United States in the district court for New Jersey; and the plaintiff, under a deed from the sheriff of the county of Union, given upon a sale by virtue of two judgments upon lien claims in the circuit court of the county of Union. 14

JNO. T. NIXON, *J.*

Conclusion of Law.

The plaintiff is not entitled to recover in this suit, and judgment is therefore rendered for the defendant, with costs.

JNO. T. NIXON, *J.*

15 And afterwards, to wit, the twenty-sixth day of March, eighteen hundred and eighty-one, upon the said facts found as aforesaid by the said court, it is considered that the said August Heidritter take nothing by his said writ, but that he be in mercy, &c.; and that the said The Elizabeth Oil Cloth Company do go thereof without day, &c.

And it is further considered by the court now here before the judge thereof, that the said The Elizabeth Oil Cloth Company do recover against the said August Heidritter ninety-one dollars and thirty-three cents for their costs and charges by them laid out about their defence in this behalf before the judge thereof, now here adjudged to the said The Elizabeth Oil Cloth Company, and with their assent, according to the form of the statute in such case made and provided, and that the said defendant have execution thereof.

Judgment signed this twenty-sixth day of March, A. D. Eighteen hundred and eighty-one.

JNO. T. NIXON, *J.*

16 *Opinion.*

United States Circuit Court, District of New Jersey.

AUGUST HEIDRITTER
vs. } In Ejectment.
THE ELIZABETH OIL CLOTH COMPANY.

By NIXON, District Judge:

* * * * * * * *

These above facts present for consideration questions of great importance, and involve the construction of the acts of Congress in regard to the forfeiture of real estate on account of violations of the internal revenue laws of the United States.

I have carefully examined the several sections alleged to have been violated in the information filed for the forfeiture and condemnation of the land and premises in dispute, and also the mechanics' lien law of the State of New Jersey, under the provisions of which the plaintiff claims to have derived his title, and will
17 briefly state the conclusions of law to which I have arrived.

I am of the opinion—

(1.) That whilst, possibly, by the phraseology of sec. 44 of the act of July 20, 1868, (which has been re-enacted in the Revised Statutes, § 3281,) only the right and interest of the owner of inculpated distillery premises can be condemned and forfeited, no such limitation in the right of forfeiture is found in either sec. 7 (§ 3260 of the Rev. Stat.) or sec. 19 (§§ 3303–5, Rev. Stat.) of the same act, under both of which the property in controversy was condemned by default, and that it seems to have been the clear intention of Congress, in these sections, to forfeit the thing, when proved to be an offender, without regard to the owner's culpability or to the interest of outside parties. To this effect was the opinion of the late Judge Woodruff, in The United States *vs.* The Distillery at Spring Valley, (11 Blatch., 255,) reversing the district court, and I see no good reason to hold differently. See also The United States *vs.* The Distilled Spirits, &c., 8 Int. Rev. Rec., 81, and Dobbins' Dis-
18 tillery *vs.* The United States, 6 Otto, 399, where it is declared
that the privity or consent of the persons interested in the offending property was not in any degree necessary in order to include their interests in the forfeiture.

The whole legislation of Congress shows a disposition and intention, under different circumstances, to distinguish between forfeiting the thing itself and forfeiting particular rights or interests in the thing. This observation is illustrated by comparing the phraseology used in sections 3260 and 3305 with that employed in §§ 3063 and 3281.

(2.) That while the decree of condemnation in favor of the United States was not made and entered in the district court until February 25, 1873, the real estate was in fact seized by the officers of the revenue, on the 24th day of the preceeding January, and the forfeiture to the Government related back to the time of the commission of the acts, incurring the forfeiture, and the title to the property from that moment vested in the United States. Henderson's Distilled Spirits, 14 Wall., 56, in which case the
19 Supreme Court, says: "Where the forfeiture is made abso-
lute by statute, the decree of condemnation, when entered, relates back to the commission of the wrongful acts, and takes date from the wrongful acts, and not from the date of the sentence or decree."

This has ever been the uniform rule in this country, in which our courts have followed the long established doctrine of the English courts. Wilkins *vs.* Despaid, 5 T. R., 112; U. S. *vs.* 1960 Bags of Coffee, 8 Cr., 398; Gelston *vs.* Hoyt, 3 Wh., 311; U. S. *vs.* Distillery, &c., 21 Int. Rev. Rec., 166; U. S. *vs.* 56 Barrels, &c., VI Am. Law R., (N. S.) 37.

(3.) That the mechanics' lien law of New Jersey, under the provisions of which the plaintiff claims to have acquired his title, requires that the claim filed in the clerk's office of the county, shall contain the name of the owner of the property at the time of filing, and that the summons issued to enforce the lien shall be against such owner as well as the builder; and that inasmuch as the owner of the real estate in controversy is divested of all his interest thereon, and the title to the same vests in the 20 United States, at the time of the commission of the act or acts which cause the forfeiture; it does not seem unreasonable that all subsequent proceedings by lienors to charge the property with the lien should be held inoperative and void against the United States, unless it were made a party to the proceedings as owner.

(4.) But whether this be so or not, I am of the opinion that under the proceedings *in rem* to give effect to the forfeiture, all persons claiming liens against the *res* were notified to come in and establish their liens; that after seizure by the marshal the property was in the possession of the court for that purpose; that whilst by such proceedings the liens upon the *res* was divested by the sale, it attached at once to the fund in court, which was realized by the sale; and that the claimants mistook their remedy by *goin*ing into the State courts to enforce their liens, and should have applied to the district court, where the property was, to be allowed to participate in the proceeds of its sale, to the extent of their claims, and 21 that if their failure so to do has resulted in their loss, no blame can attach to the government which afforded them ample opportunity for a judicial consideration of their claims.

Whether the liens attached to the premises notwithstanding the forfeitures, it is not necessary here to decide. The question was raised and discussed by Judge Dillon, in the case of the The United States *vs.* Macoy, 2 Dill., 299, and left by him unadjudicated.

(5.) Entertaining the foregoing views I am further of the opinion that the plaintiff is not entitled to recover in this suit, and that a judgment must be entered for the defendant, with costs.

(Endorsed:) U. S. circuit ct. August Heidritter *vs.* The Elizabeth Oil Cloth Co. Opinion. Filed March 5, 1881. S. D. Oliphant, clerk.

22 *Bill of Exceptions.*

Circuit Court of the United States, District of New Jersey.

AUGUST HIEDRITTER
vs.
THE ELIZABETH OIL-CLOTH COMPANY. } In Ejectment.

Be it remembered that afterward, to wit, on the fifth day of May, in the year of our Lord one thousand eight hundred and eighty,

at a stated term of the said court begun and holden in Trenton in and for the district of New Jersey, before his honor, John T. Nixon, district judge, the issue joined in the above-stated cause between the said parties (*pro ut* the pleadings) came on to be tried before the said judge without the intervention of a jury, the parties aforesaid by their counsel having, according to the statute in such case made and provided waived a jury, the plaintiff being represented by Edward A. Day, Esquire, his attorney, and William H. Corbin, Esquire of counsel, and the defendant by William R. Wilson,
23 Esq'r., its attorney, and Benjamin Williamson, J. Tredwell
Richards, and Alfred S. Brown, of counsel, and upon the trial of that issue the attorneys of the said August Heidritter, plaintiff, to maintain and prove the said issue on his part (it first having been admitted by the counsel for the said defendant that the erection of the building upon the premises in controversy, and for the erection of which the mechanic's lienors mentioned in plaintiff's bill of particulars supplied materials, was commenced June 25th, 1872,) offered in evidence the following deeds and records, viz:

An exemplified copy of the following deed, viz: Edward G. Brown and wife to Charles L. Sicher, war. deed, dated August 20, 1872, rec'd August 20, 1872, in Book 73 of Deed, for Union Co., pg. 10 &c., conveys premises in controversy.

An exemplified copy of the judgment roll in the following cases, viz: In the office of the clerk of the county of Union;
24 August Heidritter *vs.* Charles L. Sicher, builder and owner;
lien, claim, and judgment; *pro ut* the same.

An exemplified copy of the judgment roll in the following case, viz:

In the office of the clerk of the county of Union; Ferdinand Blancke and others, partners, &c., as Ferdinand Blancke, *vs.* Charles S. Sicher, builder and owner; lien claim and judgment; (*pro ut* the same.)

An exemplified copy of the following deed, viz:

Seth B. Ryder, sheriff, to August Heidritter; deed dated Sept. 24, 1873; rec. Dec. 1, 1873, in Book 84 of Deeds for Union Co., p. 582; conveys the premises in controversy under and by virtue
25 of the judgment and executions in the two cases last above
named; (*pro ut* the same.)

Also certain other deeds and records by which a four-thirteenths interest in the premises in question was conveyed away by the said plaintiff, and subsequently thereafter reconveyed to him.

And thereupon said plaintiff rested his case.

Whereupon the attorneys for the said The Elizabeth Oil Cloth Company, the defendant, to maintain and prove the said issue on its part, called as a witness—

JOHN C. BAILY, who, being duly sworn, testified among other things as follows:

I was U. S. deputy marshal for the district of New Jersey in 1873, under Samuel Plummer, U. S. marshal, and as such took

possession of the premises in controversy, among other things, in
the condemnation or forfeiture proceeding brought by the United
States against Charles L. Sicher for illicit distilling, in Feb-
26 ruary, 1878, and held such possession until the sale of the
premises was made by the U. S. marshal to Edward G.
Brown.

While in possession of said premises, a gentleman came there whose name and appearance I cannot remember, and told me that he had a claim against the premises.

Whereupon the counsel for the plaintiffs did then and there insist before the said judge that the said testimony should not be allowed on the ground that the same was incompetent, irrelevant, and immaterial, and prayed the said court not to admit and allow the same; and the said judge did then and there allow and admit the said testimony to be introduced. Whereupon the counsel for the said plaintiff did then and there propose his aforesaid objection to the ruling of the said court, and prayed that this his bill of exceptions might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

And thereupon under the above ruling the witness further testified:

I told the gentleman that the place for him to go and de-
27 fend his claim was at Trenton, and told him also of the notice
viz: the proclamation, which had then been set up; I also
published that notice in the Jersey City Times.

I saw the same gentleman on the day of sale. He was with Mr. E. G. Brown and I had conversation with them both there.

And being cross-examined said:

I remember that there was an announcement made at the marshals sale in regard to certain lien claims on the premises. A paper relating to said claims was also served upon me. Mr. Alward appeared as the attorney for the lien claimants on that day.

And thereupon the counsel for the defendant offered in evidence the following records, viz:

An exemplified copy of the following deed, viz: Edward G.
Brown and wife, to Charles L. Sicher, war. deed dated August
28 20, 1872; rec'd August 20, 1872, in book 73 of deeds for Union
co., pp, 10, &c., conveys the premises in question.

The record in full of the decree and proceedings in the following case, viz.: U. S. district court, district of New Jersey; the United States of America *vs.* Eighty-nine Hogsheads of Molasses, &c.; (*pro ut* the same).

And also an exemplified copy of the following deed, viz.: Sammuel Plummer, U. S. marshal, to Edward G. Brown; deed dated May 29, 1873; rec'd June 7, 1873, in book 81 of deeds for Union co., p. 301, &c.; conveys the premises in controversy under and by virtue of the decree and execution in the last above case; (*pro ut* the same.)

Whereupon the counsel for the said plaintiff then and there, and in each instance on the production thereof, interposed and in- 29 sisted that the said evidence so offered to be given by the defendant, to wit, the decree and proceedings on forfeiture and the deed of the U. S. marshal to Brown thereunder, was not good or admissible at law upon the issue aforesaid, and ought not to be admitted in bar of plaintiff's title to the premises in controversy, for the reason that the plaintiff's title acquired under the mechanics' lien proceedings, as aforesaid, was by law prior to the title of the said defendants acquired under the said condemnation proceedings; also for the reason that the said condemnation proceedings in no wise condemned or forfeited the interests of the said lienors in said premises, and that their said interests had not been affected by said proceedings; also for the reason that by the several acts of Congress, and the supplements thereto under which said proceedings were had and maintained, only the right, title, and interest of the said Charles L. Sicher in the premises could have been seized and condemned to be forfeited, and that the in- 30 terests of the said lienors could have in no wise been affected thereby, and also as only the interest of said Sicher in the premises had been seized and condemned, said Brown acquired only that interest at the marshal's sale, and took his title therefore, subject to the mechanics' liens on the premises; also for the reason that as under the laws of New Jersey, the title of the said plaintiff to the premises upon the sale to him by the sheriff of Union county reverted back to the date of the commencement of the buildings, viz: June 25, 1872, long prior to the time when the business of distilling was carried on by the said Sicher on the premises and long prior to the time when the U. S. acquired its lien thereto, the said condemnation proceedings were ineffectual to cut off or affect said plaintiff's title; also for the reason that by the acts of Congress, and the supplements thereto under which said proceedings were had, only the right, title, and interest of Charles L. Sicher in the premises, and the right, title, and interest of 31 every person who knowingly suffered and permitted the business of a distillery to be there carried on, or who connived at the same, could be forfeited to the United States, and no proof has been made either in the condemnation proceedings or in the trial of this cause, that the lienors had knowingly suffered and permitted the business of a distillery to be carried on — the premises, or that they had connived at the same, and therefore, that the interests of such lienors had not been forfeited to the United States and were not affected by the decree. Also for the reason that the district court never had jurisdiction to pronounce the said decree in that the United States internal revenue collector had not seized the said premises prior to the filing of the information; and also for the reason that the information did not pronounce in distinct articles the causes of forfeiture, and did not aver that the same were contrary to the form of the statutes in such case made and provided, and that the allegations therein did not conform strictly to the statutes under which the pro-

32 ceedings were had and therefore the said decree was void and no title could be acquired thereunder; also, for the reason that the said decree was void in that the court in said proceedings did not have proof made of the allegations in the libel of information, and therefore said Brown acquired no title to the premises in question, and also on the ground that by the terms of said deed all that said Brown acquired was the right, title, and interest of said Sicher, of, in, and to the premises in controversy, and therefore took the same subject to said mechanics' liens.

But his honor, the said judge, held and affirmed that the said evidence so offered to be given by the defendant as aforesaid, was good and admissible in law, and thereupon the same was read and given in evidence. To which ruling of his honor the said judge, the plaintiff then and there prayed a bill of exceptions, and his honor the said justice sealed the exception accordingly.

JNO. T. NIXON, *J.* [L. S.]

33 And thereupon the said defendant, further to prove and maintain the said issue on its part, offered in evidence certain records and mesne conveyances by which the title to the premises in controversy passed from said Brown and became finally vested in the said defendant, and thereupon the said defendant further to prove and maintain the said issue on its part, called as a witness—

Edward G. Brown, who, being duly sworn, testified among other things, as follows—

I have heard the testimony of the witness, John C. Bailey, in reference to the gentleman who was present with me at the marshal's sale; that gentleman was Frederick L. Heidritter, a son of the plaintiff.

Whereupon the counsel for the plaintiff then and there objected to the admission of the said testimony, for the reason that the same was incompetent, immaterial, and irrelevant, and the said judge did then and there allow and admit the said testimony to be introduced.

34 Whereupon the counsel for the said plaintiff did then and there propose his aforesaid objection to the ruling of the said court and prayed that his bill of exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

Thereupon under the above ruling this witness further testified, and being cross-examined:

I remember a paper being read at the sale; Mr. Alward was present; the paper was in regard to certain lien claims on the seized premises; also had a conversation with said Frederick L. Heidritter in relation to the liens; I knew at the time I purchased the premises at said sale of the existence of the liens.

And thereupon the defendant, further to prove and maintain the issue on its part, called—

JAMES RAY, who being duly sworn, testified among other things, as follows:

I am a Government storekeeper, and remember the seizure
35 of the premises in controversy I saw Mr. Frederick L. Heidritter at the distillery shortly after the seizure.

Whereupon the counsel for plaintiff did then and there object to the admission of the testimony, and insisted that the same be not allowed in evidence for the reason that it was incompetent, immaterial, and irrelevant. And his honor, the said judge, then and there admitted and allowed the said testimony to be introduced.

Whereupon the counsel for the said plaintiff did then and there propose his aforesaid objection to the ruling of the said court, and prayed that his bill of exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON, *J.* [L. S.]

Thereupon under the above ruling the witness testified further as follows:

Said Heidritter said he had a claim against the building, and that he thought his claim came in ahead of the Government. He wanted permission to put up a paper on the building, and he did
36 post such a paper, and being cross examined said:

That paper was the same as was read at the sale.

And said defendant further, to prove and maintain the issue on its part, called as a witness—

FREDERICK L. HEIDRITTER, who, being duly sworn, among other things, said:

I reside and do business at Elizabeth; I am a lumber dealer, and am now a partner of my father, the plaintiff in this case. I have been connected with my father's business for fifteen years last past, and was in business with him at the time of the seizure, and was then his managing clerk.

Whereupon the counsel for the plaintiff did then and there interpose and object to the admission of said testimony for the reason that the same was immetrial and irrelevant, and the said judge did then and there allow and admit the said testimony to be in-
37 troduced.

Whereupon the counsel for the said plaintiff did then and there propose his aforesaid objectian to the ruling of the said court, and prayed that his bill of exception might be sealed, and it is sealed accordingly.

JNO. T. NIXON. [L. S.]

And said witness being cross-examined, said:

The building seized was the same for which the materials were supplied by my father, and mentioned in the lien claims, and thereupon the defendant closed its case, and this concluded the testimony in the case.

(Endorsed:) United States circuit court, district of New Jersey. August Heidritter *vs.* The Elizabeth Oil Cloth Company. In ejectment. Bill of exceptions. Edward A. Day. Filed May, 5, 1880. J. D. Oliphant, clerk.

38 *Bill of Particulars.*

New Jersey Supreme Court.

AUGUST HEIDRITTER
vs.
THE ELIZABETH OIL CLOTH COMPANY. } In Ejectment.

Take notice that the following is a bill of particulars of the claim or title of the plaintiff to the premises in question in the above-stated cause.

Said premises were formerly owned by Jacob T. Merritt, against whom the following decree was entered:

Final Decree, entered October 16, 1860.

In Chancery of New Jersey.

Between
WILLIAM H. GIBBONS, Compl't,
and
JACOB T. MERRITT *et al.*, Def'ts. } On Bill, &c.

On November 12, 1860, a writ of *fieri facias* was issued upon the above decree, said writ being recorded in the office of the clerk in chancery, in book P 2 of executions, pages 543, &c., by virtue of which said writ the sheriff, to whom the same was directed, did convey the premises in question in this case, together with other lands, by the following deed: 39

Melim W. Halsey, sheriff, to Edward G. Brown; deed dated March 21, 1861; ack., July 17, 1861; rec. Feb'y 5, 1862; liber 9, pp. 498, &c; conveys with other land the premises in question in this cause.

Edward G. Brown and wife to Charles L. Sicher; deed dated August 20, 1872; ack. August 20, 1872; rec. August 20, 1872; liber 73, pp. 10, &c.; conveys the premises in question in this cause.

Between the first day of June and the first of September, A. D. 1872, the said Charles L. Sicher, being in possession of the premises in question under and by virtue of a parole lease, or an agreement to convey, or by virtue of the last above-recited deed, and on or about June 25th in said year, commenced the erection and construction of a building upon the premises in question in this cause. 40

On the 21st day of February, and the 13th day of March, A. D. 1873, lien claims were filed in the office of the clerk of Union county against the said building and the premises in question in this cause, respectively, as follows, viz:

Lien Claim. Filed February 21, 1873.

In the Office of the Clerk of the County of Union.

August Heidritter
vs.
Charles L. Sicher, Builder and Owner.

Recites as follows, viz:

That August Heidritter "files his claim for the payment of $1,711.22 with interest from August 23, 1872, against all that certain building and lot or curtilage whereon the same is erected, and hereinafter particularly described, which said sum is a debt contracted and owing by Charles L. Sicher, as builder of the
41 said building, to the said August Heidritter for labor performed and materials furnished by him within one year last past for the erection and construction of said building, and it is claimed to be a lien on said building, and the said lot or curtilage whereon it is erected."

And contains these matters:

"I. The said building is a two and a half story frame building—a distillery twenty-five feet by one hundred feet on a lot or curtilage," (therein described) being the premises in question in this cause.

"II. The owner of said lot or curtilage is the said Charles L. Sicher, who has an estate in fee simple therein."

"III. The name of the person who contracted the said debt, and for whom and at whose request the said labor was performed and materials furnished for which the aforesaid lien is claimed, is the said Charles L. Sicher."

"IV. A bill of particulars of the aforesaid labor performed and materials furnished by the said Heidritter, exhibiting the balance justly due to him from the said Charles L. Sicher (the items
42 of the account extending from June 21, 1872, to August 23, 1872), and showing a balance due of $1,711.22.

And said claim also states as follows: "All the above labor was performed and materials furnished between the twenty-first day of February, eighteen hundred and seventy-two, and the twenty-first day of February, eighteen hundred and seventy-three."

To which said claim is annexed the affidavit of August Heidritter.

Lien Claim. Filed March 13, 1873.

In the Office of the Clerk of the County of Union.

Ferdinand Blancke, David Mulford, and James R. English,
Partners trading under firm name of F. Blancke
vs.
Charles L. Sicher, Owner and Builder.

Recites as follows, viz:

"That Ferdinand Blancke, David Mulford, and James R. Eng-

lish, partners trading under firm name of F. Blancke, file
43 this their claim for the payment of two hundred and sixty-four dollars and thirty-five cents, with interest from December thirteenth, eighteen hundred and seventy-two, against all that certain building and lot, or curtilage whereon the same is erected, and hereinafter particularly described, which said sum is a debt contracted and owing by Charles L. Sicher, as builder of the said building, to the said F. Blancke, for materials furnished and labor performed by them within one year last past, for the erection and construction of said building, and it is claimed to be a lien on said building and the said lot or curtilage wheroon it is erected;" and further contains these matters:

"I. The said building is a two and a half story frame building—a distillery—twenty-five feet by one hundred feet, on a lot or curtilege (therein described), being the premises in question in this cause.

"II. The owner of said lot or curtilage is Charles L. Sicher, who has an estate in fee simple therein."

"III. The name of the person who contracted the said
44 debt, and for whom, and at whose request the said labor was performed for which the aforesaid lien is claimed, is the said Charles L. Sicher."

IV. A bill of particulars of the aforesaid labor performed and materials furnished by the said Ferdinand Blancke, David Mulford, and James R. English, partners, as aforesaid, exhibiting the balance justly due to them from the said Charles L. Sicher.

(The items of the account extending from September 7, 1872, to December 30, 1872,) and showing the amount justly due, $264.35. Said claim also states as follows: "All the above labor was performed and materials furnished between the fifteenth day of March, in the year eighteen hundred and seventy-two, and the fifteenth day of March, in the year eighteen hundred and seventy-three." To which said claim is annexed the affidavit of the said David Mulford. The said claim having been as aforesaid filed upon the liens created thereby, the same were enforced by suits in the circuit court of the
45 county of Union, and general judgments, but specially to be made of the premises, in the declarations in said suits mentioned, were entered as follows, viz:

Judgment.

Union County Circuit Court.

AUGUST HEIDRITTER *vs.* CHARLES L. SICHER.

Liber 10, p. 280, and entered June 14, 1873.

Dam	$1,806 05
Costs	45 44
	$1,851 49

A general judgment, but specially to be made of the land and premises in the declaration in said cause mentioned, including the premises in question in this cause.

Judgment.

Union County Circuit Court.

FERDINAND BLANCKE, DAVID MULFORD, and JAMES R. ENGLISH,
under firm of F. Blancke
vs.
CHARLES L. SICHER.

Liber 10, p. 298. Entered June 18, 1873.

Dam	$272 95
Costs	43 02
	$315 97

A general judgment, but specially to be made of the land and premises in the declaration in said cause mentioned, includ-
46 ing the premises in question in this case.

On the 19th and 20th days of June, A. D. 1873, respectively, writs of special *fieri facias* were issued upon the above recited judgments, and by virtue thereof, the premises in question in this cause, duly seized and sold by the sheriff, to whom the same were directed.

Seth B. Ryder, sheriff, to August Heidritter; deed dated September 24, 1873; ack. October 10, 1873; rec. December 1, 1873; liber 84, pp. 582, &c.; conveys the premises in question in this cause.

August Heidritter and wife to Conrad Hanser; deed dated March 20, 1874; ack. March 23, 1874; rec. May 7, 1874; liber 89, pp. 299, &c.; conveys the equal undivided four-thirteenths part of the premises in question in this cause.

47 Conrad Hanser and wife to August Heidritter; deed dated November 14, 1877; ack. November 14, 1877; rec. November 16, 1877; liber 130, pp. 310, &c.; conveys the premises last-above described.

Judgment Entered Jan'y 27, 1874.

The United States District Court for the District of New Jersey.

THE UNITED STATES
vs.
CHARLES L. LICHER, KONRAD HANSEN, and JOSEPH BECK. } In Debt.

Debt	$1,861 71
Costs	85 05
	$1,946 76

On the 7th day of October, A. D. 1874, a writ of *fieri facias* was issued in the above judgment, said writ being recorded in the office of the clerk of the Unted States district court for the district of New Jersey, at Trenton, in book A of executions, page 76.

Under and by virtue of which said writ the premises last
48 above described, together with other lands, were duly seized
and sold by the marshal to whom the same was directed.

Robert L. Hutchinson, United States marshal, to August Heidritter; deed dated ——; ack. February 13, 1879; rec. February 24, 1879, liber 133, pp. 117, &c.; conveys the interest of said Conrad Hansen in and to the premises in question in this cause.

Dated August 5th, 1879.

Yours, resp'y, EDWARD A. DAY,
Attorney for Plaintiff.

To William R. Wilson, Esq., Attorney for Defendant.

Endorsed: New Jersey supreme court. August Heidritter *vs.* The Elizabeth Oil Cloth Company. In ejectment. Bill of particulars. Edward A. Day, att'y. Filed May 5, 1880. S. D. Oliphant, clerk. Due and legal service of a copy of the within bill of particulars is hereby acknowledged for the defendant. Dated Aug. 5, 1879. William R. Wilson, att'y for defendant, per Bergen.

49 New Jersey Supreme Court, Union County.

THE ELIZABETH OIL CLOTH COMPANY
ads.
AUGUST HEIDRITTER.
} In Ejectment.

The following is a bill of particulars or abstract of the title of The Elizabeth Oil Cloth Company, the defendant above named, to the premises in question in this cause.

The said premises are situated in the city of Elizabeth, county of Union, and State of New Jersey, and are bounded and described as follows, viz: Beginning at the corner formed by the intersection of the northerly side of Butler street with the westerly side of Second avenue, thence northwesterly along said side of Second avenue two hundred feet to the southerly side of Second street, thence south-
westerly along said side of Second street one hundred feet to
50 land now or late of E. G. Brown, thence southeasterly par-
allel with Second avenue two hundred feet to said side of
Butler street, thence northeasterly along said side of Butler street one hundred feet to the place of beginning.

Said premises were formerly owned by Jacob T. Merritt, and were conveyed, with other property, by the following deed:

Meline W. Halsey, sheriff, to Edward G. Brown; deed dated March 21st, 1861; ack'd July 17th, 1861; recorded Feb'y 5th, 1862, in book 9 of deeds for Union county, page 498, &c.; conveys with other land the premises in question in this cause.

Edward G. Brown and wife to Charles L. Sicher; deed dated August 20th, 1872; ack'd same day; recorded August 20th, 1872, in Book 73 of Deeds for said county, page 10, &c.; conveys the premises in question in this cause.

On the 24th day of January, A. D. 1873, the said premises, with the buildings thereon and the appurtenances thereto, were seized, together with certain personal property, by the United States for a violation of the United States internal revenue laws, and thereupon the following proceedings were had : 51

The United States District Court, District of New Jersey.

THE UNITED STATES OF AMERICA
against
89 HOGSHEADS OF MOLASSES, 4 BARRELS OF WHISKEY, 17 BARRELS of spirits (and other property) and the distillery, vinegar establishment, rectifying establishment, lands and premises of Charles L. Sicher, at Elizabeth, Union county, New Jersey.

Information : Sec. 48, act of June 30th, 1864, and acts amendatory, sections 14, 16, 29, 38, 42; act of July 13th, 1866, and acts amandatory, sec. 21, act of March 2d, 1877, sections 5, 7, 14, 19, 22, 36, 37, 44, 47, 56, 57, act of July 20th, 1868.

52 February 4th, 1873.—Information filed under the above noted sections of the United States Statutes alleges seizure of the above-mentioned personal property, and of the premises in question in this cause, with other property. After such legal proceedings as are prescribed by law in such cases had been duly taken, the said premises and property, including the premises in question in this cause, were decreed by the court above mentioned to be condemned as forfeited to the United States; and it was further decreed that execution issue to the marshal of the district commanding him to sell the said personal and real property, including the premises in question in this cause.

Execution was accordingly issued, and bears date March 10th, 1873, and is recorded in the office of the clerk of the district court of the United States for the district of New Jersey in book A of executions, folios 53, &c.

The premises last above mentioned, after having been duly advertised, were sold by the said marshal, and at such sale Edward G. Brown became the purchaser thereof, and thereupon the following deed was executed, duly acknowledged, and delivered :

53 Samuel Plummer, United States marshal for the district of New Jersey, to Edward G. Brown; deed dated May 29th, 1873, ack'd same day; recorded June 7th, 1873, in liber 81 of deeds for Union county, page 301, &c. This deed recites the filing of the information and the proceedings subsequent thereto, above referred to, and conveys, with other property, the premises in question in this cause.

Edward G. Brown and wife to The Eastern Manufacturing Company; deed ack'd Dec. 17th, 1874; recorded Feb. 8th, 1875, in book 96 of Deeds for Union county, page 428; conveys a tract of land which includes the premises in question in this cause.

The Eastern Manufacturing Company, by N. K. Thompson, sheriff, to Francis Q. Dudley; deed dated May 3d, 1877; ack'd June 20th,

1877; recorded July 2d, 1877, in book 117 of deeds for Union
54 co., page 527, &c.; conveys same premises as last deed.

Francis Q. Dudley and wife to Joseph A. Minot; deed dated July 3d, 1877; ack'd August 1st, 1877; recorded September 22d, 1877, in book 118 of deeds for Union co., page 464, &c.; conveys same premises as last deed.

Joseph A. Minot and wife to The Elizabeth Oil Cloth Company; deed dated Oct. 15th, 1878; ack'd same day; recorded Oct. 17th, 1878, in book 130 of deeds for Union co., page 375, &c.; conveys same premises as last deed.

Thus the title to the premises in question in this cause became vested in The Elizabeth Oil Cloth Campany, the defendant in said cause.

Dated July 17th, 1879. W. R. WILSON,
Att'y for Deft.

55 (Endorsed:) New Jersey supreme court, Union county. The Elizabeth Oil Cloth Company ads. August Heidritter. In ejectment. Bill of particulars of defendant. W. R. Wilson, att'y for deft. I hereby acknowledge service of a bill of particulars of which within is a copy, this 17th day of July, 1879. Edward A. Day, att'y for pl't'ff.

56 *Stipulation.*

Circuit Court of the United States, District of New Jersey.

AUGUST HEIDRITTER
vs.
THE ELIZABETH OIL CLOTH COMPANY.
} In Ejectment.

It is hereby stipulated and agreed that the following exhibits, viz., the record of the mechanic's liens and judgments in the case of August Heidritter against Charles L. Sicher, and of Ferdinand Blancke and others against Charles L. Sicher, excepting the statements of the accounts therein, but including the deed given by the sheriff under said proceedings, and the record of the proceedings of condemnation in the United States district court for the district of New Jersey, in the case of United States against Eighty-nine Hogsheads of Molasses, &c., including the advertisement of sale and the deed of conveyance from Samuel Plummer, U. S. Marshal, to Edward G. Brown, excepting therefrom the acknowledgment and affidavit of said marshal, these being all the exhibits which are necessary to a hearing of the case only shall be printed, it being understood that an abstracts of the chains of title of the plaintiff and defendant respectively are sufficiently set forth in the bills of particulars and the bill of exception filed in the cause.

EDWARD A. DAY,
Att'y for Pl't'ff.
WILLIAM R. WILSON,
Att'y for Def't.
Per A. S. B.

57 In the Office of the Clerk of the County of Union.

AUGUST HEIDRITTER,
vs.
CHARLES L. SICHER, Builder and Owner. } Lien Claim.

UNION COUNTY, *ss :*

Be it known, that August Heidritter filed this his claim for the payment of one thousand seven hundred and eleven dollars and twenty-two cents, with interest from August twenty-third, eighteen hundred and seventy-two, against all that certain building and lot, or curtilage, whereon the same is erected, and hereinafter particularly described, which said sum is a debt contracted and owning by Charles L. Sicher, as builder of the said building, to the said August Heidritter for labor performed and materials furnished by him within one year last past for the erection and construction of said building, and it is claimed to be a lien on said building and the said lot or curtilage whereon it is erected.

58 1. The said building is a two-and-a-half story frame building, a distillery, twenty-five feet by one hundred feet, on a lot or curtilage situate in the city of Elizabeth, county of Union and State of New Jersey.

Beginning at the corner formed by the intersection of the northerly side of Butler street with the westerly side of Second avenue, thence northwesterly along said side of Second avenue two hundred feet to the southerly side of Second street; thence southwesterly along said side of Second street, one hundred feet to land of E. G. Brown; thence southeasterly paralled with Second avenue, two hundred feet to said side of Butler street; thence northeasterly along said side of Butler street one hundred feet to the place of beginning.

2. The owner of said lot or curtilage is the said Charles L. Sicher who has an estate in fee simple therein.

3. The name of the person who contracted the said debt, and for whom and at whose request the said labor was performed and materials furnished for which the aforesaid lien is claimed is the said Charles L. Sicher.

59 4. The following is a bill of particulars of the aforesaid labor performed and materials furnished by the said Augustus Heidritter, exhibiting the balance justly due to him from the said Charles L. Sicher.

(Here follows a statement of account, the items of which run from June 21, 1872, to August 23, 1872, and amount in the aggregate to $1,711.22.)

All the above labor was performed and materials furnished between the twenty-first day of February, eighteen hundred and seventy-two, and the twenty-first day of February, eighteen hundred and seventy-three.

A. HEIDRITTER.

NEW JERSEY, *Union County, ss :*

Augustus Heidritter of the city of Elizabeth, in the county of Union, and State of New Jersey, of full age, maketh oath and saith, that he is the claimant named in the foregoing claim, that the above bill of particulars and statements therein set forth are true, 60 that the same is for labor performed and materials furnished by this deponent in the erection of the building in the said claim described at the times specified in the said bill of particulars, and that the amount of one thousand seven hundred and eleven dollars and twenty-two cents, with interest from August twenty-third, eighteen hundred and seventy-two, as claimed therein, is justly due and owing from the said Charles L. Sicher to this deponent.

A. HEIDRITTER.

Sworn and subscribed before me, this 21st day of February, 1873.

N. C. J. ENGLISH, *M. C. C.*

(Here follows exemplification.)

(Endorsed): In the office of the clerk of the county of Union. August Heidritter *vs.* Charles L. Sicher, builder and owner. Lien claim. Joseph Alward, att'y. Filed Feb. 21st, 1873. Henry R. Cannon, clerk. Summons sealed and issued on this lien claim, Feb. 21st, 1873. Henry R. Cannon, clerk.

61 In the Office of the Clerk of the County of Union.

FERDINAND BLANCKE, DAVID MULFORD, and JAMES R. ENGLISH, partners trading under firm name F. Blancke.
vs.
CHARLES L. SICHER, Builder and Owner.
} Lien Claim.

UNION COUNTY, *ss*:

Be it known that Ferdinand Blancke, David Mulford, and James R. English, partners trading under firm name F. Blancke, file this their claim for the payment of two hundred and sixty-four dollars and thirty-five cents, with interest from December thirtieth, eighteen hundred and seventy-two, against all that certain building and lot or curtilage whereon the same is erected, and hereinafter particularly described; said sum is a debt contracted and owing by Charles L. Sicher, as builder of the said building, to the said F. Blancke for materials furnished and labor performed by them 62 within one year last past for the erection and construction of said building, and it is claimed to be a lien on said building and the said lot or curtilage whereon it is erected.

1. The said building is a two and a half story frame building, a distillery twenty-five feet by one hundred feet, on a lot or curtilage situate in the city of Elizabeth, county of Union, and State of New Jersey.

Beginning at the corner formed by the intersection of the northerly side of Butler street with the westerly side of Second avenue, thence northwesterly along said side of Second avenue two hundred feet to the southerly side of Second street, thence southwesterly along said side of Second street one hundred feet to the land of E. G. Brown, thence southeasterly parallel with Second avenue two hundred feet to said side of Butler street, thence northeasterly along said side of Butler street one hundred feet to the place of beginning.

2. The owner of said lot or curtilage is Charles L. Sicher, who has an estate in fee simple therein.

63 3. The name of the person who contracted the said debt, and for whom and at whose request the said labor was performed and materials furnished for which the aforesaid lien is claimed, is the said Charles L. Sicher.

4. The following is a bill of particulars of the aforesaid labor performed and materials furnished by the said Ferdinand Blancke, David Mulford, and James R. English, partners as aforesaid, exhibiting the balance justly due to them from the said Charles L. Sicher.

(Here follows a statement of the account, the items of which run from Sept. 7, 1872, to Dec. 30, 1872, the aggregate of which amounts to $264.35.)

All the above labor was performed and materials furnished between the fifteenth day of March, eighteen hundred and seventy-two, and the fifteenth day of March, eighteen hundred and seventy-three.

F. BLANCKE.

UNION COUNTY, *ss:*

64 DAVID MULFORD, of the city of Elizabeth, county of Union, and State of New Jersey, of full age, maketh oath and saith that he is one of the claimants named in the foregoing claim, and that he is a member of the firm of F. Blancke; that the claim is for labor performed and materials furnished by the firm of F. Blancke in the erection of the buildings in the said claim described, at the times specified in the said bill of particulars, and that the amount of two hundred and sixty-four dollars and thirty-five cents, with interest from December thirtieth, eighteen hundred and seventy-two, as claimed therein, is justly due and owing from the said Charles L. Sicher to the said firm of F. Blancke.

DAVID MULFORD.

Sworn and subscribed, this fifteenth day of March, 1873.

SAMUEL D. HAINES, *M. C. C.*

(Here follows exemplification.)

65 (Endorsed): In the office of the clerk of the county of Union. Ferdinand Blancke, David Mulford, and James R. English, partners trading under the firm name of F. Blancke, *vs.* Charles L. Sicher. Lien claim. Joseph Alward, att'y. Filed March 13th, 1873. Henry R. Cannon, clerk. Summons sealed and issued on this lien claim March 15, 1873. Henry R. Cannon, clerk.

66 Pleas before the judge of our circuit court, holden at Elizabeth, in and for the county of Union, of the term of April, in the year of our Lord, one thousand eight hundred and seventy-three. Henry R. Cannon, clerk.

Union County Circuit Court, of the tenth day of April, in the year of our Lord one thousand eight hundred and seventy-three.

UNION COUNTY, *ss:*

Charles L. Sicher, owner of the lot and building hereinafter mentioned and described, and builder of the said building, the defendant in this suit, was summoned (the residence of the said Charles L. Sicher not being known to the plaintiff, the summons was legally served by affixing a copy thereof to said building, and by inserting it for four weeks, once in each week, in the Elizabeth Daily Monitor, a newspaper of this State, published and circulating in the county where said building is situate to answer unto August Heidritter, the plaintiff therein, of a plea of trespass on *on* the case upon promises, and thereupon the plaintiff, by Joseph Alward, his attorney, complains, for that whereas the said Charles L. Sicher hereto-
67 fore, to wit, on the twentieth day of February, in the year of our
Lord, one thousand eight hundred and seventy-three, at Elizabeth, in the county of Union, and State of New Jersey, was indebted to the plaintiff in the sum of three thousand five hundred dollars for goods, wares, and merchandise before that time, sold and delivered by the plaintiff to the said Charles L. Sicher at his request. And in three thousand and five hundred dollars for work and labor before that time done and performed, and materials furnished by the plaintiff for the said Charles L. Sicher at his request, and in three thousand five hundred dollars for so much money by the plaintiff before that time lent and advanced to the said Charles L. Sicher at his request. And in three thousand five hundred dollars for so much money by the plaintiff before that time paid for the use of the said Charles L. Sicher at his request. And in three thousand five hundred dollars for so much money by the said Charles L. Sicher before that time had and received for the use of the plaintiff. And in three thousand five hundred dollars for interest upon, and for forbearance by the plaintiff to the said Charles L. Sicher at his
68 request of divers large sums of money before that time due and
owing from the said Charles L. Sicher to the plaintiff. And in three thousand five hundred dollars for so much money then and there found to be due from the said Charles L. Sicher to the plaintiff on an account stated between them, and being so indebted the said Charles L. Sicher, in consideration thereof, then and there promised the plaintiff to pay him the said severals sums of money on request. Yet the said Charles L. Sicher has disregarded his said several promises, and has not paid the said several sums of money, nor any of them, or any part thereof, although often requested so to do, but to do so has hitherto wholly refused, and still does refuse, to the *to the* damage of the plaintiff three thousand five hundred dollars, and therefore he brings his suit, &c.

And the said plaintiff avers that the moneys above mentioned are, by the provisions of the act of the Legislature of the State of New Jersey, entitled "An act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March 11, 1853, and the supplements thereto, a lien upon a
69 certain building and lot of land of the said Charles L. Sicher therein described as follows: The said building is a two and a half story frame building, a distillery, twenty-five feet by one hundred feet, on a lot or curtilarge situate in the city of Elizabeth, county of Union, and State of New Jersey, beginning at the corner formed by the intersection of the northerly side of Butler street with the westerly side of second avenue, thence northwesterly along said side of second avenue two hundred feet to the southerly side of Second st.; thence southwesterly along said side of Second street one hundred feet to land of E. G. Brown; thence southeasterly parallel with Second avenue two hundred feet to said side of Butler st.; thence northeasterly along said side of Butler street one hundred feet to the place of beginning.

Notice is hereby given that this action is brought to recover the amount due on an account, of which the following is a true copy:

(Here follows a statement of the account, the items of which run from June 21, 1872, to August 23, 1872, the total amount being $1,711.22.)

Take notice that judgment will be claimed at the proper
70 time for the above sum of seventeen hundred and eleven dollars and twenty-two cents, with interest from Aug. 23, 1872.

And now at this day, that is to say the fourteenth day of June, A. D. eighteen hundred and seventy-three, to which day the said defendant had, have to the declaration aforesaid to answer comes the said plaintiff by his said attorney, before the said judge at Elizabeth aforesaid, and the said defendant although solomnly called, comes not but makes default, neither says he anything in bar or preclusion of the action aforesaid against him whereby the said plaintiff remains wholly undefended against the said defendant, and ought to recover against the said defendant his damages, &c.

Whereupon it is considered that the said plaintiff do recover against the said defendant his damages by the court now here assessed at one thousand eight hundred and six dollars and five cents, and also the sum of forty-five dollars and forty-four cents for his costs and charges by him about his suit in this behalf ex-
71 pended by the clerk of the court now here adjudged to him of increase with his assent, which damages, costs, and charges, in the whole, amount to one thousand eight hundred and fifty-one dollars and forty-nine cents.

Which is a general judgment, but specially to be made of the lands and premises in said declaration mentioned.

And the said defendant in mercy, &c.

Judgment signed June 14th, 1873.

DAVID A. DEPUE, *Judge.*

Union Co. Circuit Court.

AUGUST HEIDRIETTER *vs.* CHARLES L. SICHER. } *Fi. fa. de bo. et ter.* In Case on Lien.

Returnable Sept. term, 1873.

Levey damages	415	56
Costs taxed at	44	78
Int. from 14th June, 1873, till paid, besides sh'ff's ex'n fees.	460	34

JOSEPH ALWARD, *Att'y.*

By virtue of the above-stated writ of *fieri facias* to me directed, I did sell at public vendue at the court-house in the city of Elizabeth, N. J., on the 24 day of Sept., 1873, (pursuant to advertisement,)
and one adj. all that tract or parcel of land and premises de-
72 scribed in said writ to August Heidritter, he being the
highest bidder for the same.

M. C. C.	$1	00
Pub.	1	00
Sheriff's fee, levy, and return	1	12
Advertising	3	50
Adjournment and adv.	11	00
Selling	1	00
Statement	1	00
Commissions	1	00
Affidavit		32
Deed	3	00
25 per cent. added	5	98
Printing bill	20	00
	$49	92

This is to certify that the above statement is correct, that I did duly advertise and sell the property described in the above-stated execution, as required by law, and the proceeds of said sale, after deducting therefrom sheriff's fees, amount to $\frac{8}{100}$.

SETH B. RYDER, *Sh'ff.*

ELIZABETH, *June 5th*, 1874.

73 UNION COUNTY, *ss:*

The State of New Jersey to the Sheriff of the County of
[SEAL.] Union, Greeting:

We command you that of certain building, and the lot or curtilage, whereon the same is erected, described as follows:

The said buildings are a two-and-a-half-story frame rectifying house twenty-five feet by sixty feet, and a one-story and loft frame barn sixteen feet by twenty-two feet, both on a lot or curtilage situate in the city of Elizabeth, county of Union, and State of New Jersey—

Beginning in the northerly side of Butler street at a stake distant four hundred feet southwest of the corner formed by the intersection of the northwesterly side of Butler *Butler* street, with the southwesterly side of Elizabeth avenue, and from the said stake running north twenty-eight degrees and forty-five minutes west ninety-three feet; thence south fifty-three degrees and twenty seven minutes west fifty feet and five inches; thence
south forty-eight degrees and forty-five minutes east eighty-
74 six feet and three inches to the northerly side of Butler
street; thence along said side of Butler street north sixty-one degrees and fifteen minutes east fifty feet to the place of beginning, in whatsoever hands the same may be, you cause to be made the sum of four hundred and sixty dollars and thirty-four cents, which August Heidritter, lately in our circuit court, holden at Elizabeth, in and for said county of Union, recovered specially against Charles L. Sicher, builder and owner of the buildings and the curtilage whereon the same is erected, above described, as well for his damages which he had sustained on occasion of the non-performance of certain promises and undertakings by the said Charles L. Sicher, then lately made to the said August Heidritter, as for his costs and charges by him about his suit in that behalf expended, whereof the said Charles L. Sicher is convicted, as appears of record, and which said damages and costs were ordered and adjudged by the judgment of the court to be a lien on said buildings, and the lot or curtilage whereon the
same are erected, hereinbefore described, according to the
75 provisions of an act of the Legislature of New Jersey, enti-
tled "An act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March 11th, 1853, and the supplement thereto, and were by the judgment of said court ordered to be made specially of the said buildings and lot or curtilage whereon the same are erected. And have you those moneys before our circuit court aforsaid, at Elizabeth aforesaid, the first Tuesday of September next, to render unto the said August Heidritter for his damages aforesaid, and have you then and there this writ.

Witness David A. Depue, Esquire, judge of our said court at Elizabeth aforesaid, the nineteenth day of June, in the year one thousand eight hundred and seventy-three.

HENRY R. CANNON, *Clerk.*

JOSEPH ALWARD, *Attorney.*

(Endorsed:) Union county circuit court. August Heid-
76 ritter *vs.* Charles L. Sicher *Fi. fa. de bo. et ter.* In case on
lien. Ret'ble Sept. term, 1873. Joseph Alward attorney. Levy damages, $415.56; costs taxed at $44.78—$460.34. Int. from 14th June, 1873, till paid, besides sh'ff's ex'n fees, 96. Recorded June 20th, 1873, in Book No. 7, of Executions for Union County, on pages 80, &c. Henry R. Cannon, clerk. Del'd to me June 21st, 1873, at 11.20 a. m. Seth B. Ryder, sh'ff. I return this execution with levy & statement of sale annexed. Seth B. Ryder, sh'ff.

(Here follows exemplification.)

77 Pleas before the judge of our circuit court, holden at Elizabeth, in and for the county of Union, of the term of April, in the year of our Lord one thousand eight hundred and seventy-three. Henry R. Cannon, clerk Union county circuit court, of the eighteenth day of April, in the year of our Lord one thousand eight hundred and seventy-three.

UNION COUNTY, *ss:*

Charles L. Sicher, owner of the lot and building hereinafter mentioned and described, and builder of the said building, the defendant in this suit, was summoned (the residence of the said Charles L. Sicher not being known to the plaintiff, the summons was legally served by affixing a copy thereof to said building and by inserting it four weeks, once in each week, in the Elizabeth Daily Monitor, a newspaper of this State, published and circulating in the county where said building is situate, to answer unto Ferdinand Blancke, David Mulford and James R. English, partners
78 under firm name of F. Blancke, the plaintiffs therein of a plea of trespass on the case upon promises, and thereupon the plaintiffs, by Joseph Alward, their attorney, complain for that whereas, the said Charles L. Sicher heretofore, to wit, on the first day of March, in the year of Lord one thousand eight hundred and seventy-three, at Elizabeth, in the county of Union and State of New Jersey, was indebted to the plaintiffs in the sum of six hundred dollars for goods, wares, and merchandise before that time sold and delivered by the plaintiffs to the said Charles L. Sicher at his request. And in six hundred dollars for work and labor before that time done and performed and materials furnished by the plaintiffs for the said Charles L. Sicher at his request. And in six hundred dollars for so much money by the plaintiffs before that time lent and advanced to the said Charles L. Sicher at his request. And in six hnndred dollars for so much money by the plaintiffs before that time paid for the use of the said Charles L. Sicher at his request. And in six hundred dollars for so much money by the said Charles L.
79 Sicher before that time had and received for the use of the plaintiffs. And in six hundred dollars for interest upon and for forbearance by the plaintiffs to the said Charles L. Sicher at his request of divers large sums of money before that time due and owing from the said Charles L. Sicher to the plaintiffs. And in six hundred dollars for so much money then and there found to be due from the said Charles L. Sicher to the plaintiffs, on an account stated between them, and being so indebted, the said Charles L. Sicher, in consideration thereof, then and there promised the plaintiffs to pay them the said several sums of money or request. Yet the said Charles L. Sicher has disregarded his said several promises and has not paid the said several sums of money, nor any of them or any part thereof, although often requested so to do; but to do so has hitherto wholly refused, and still does refuse, to the damage of the plaintiffs six hundred dollars, and therefore they bring their suit, &c.

And the said plaintiffs aver that the moneys above mentioned are,

by the provisions of the act of the Legislature of the State of New Jersey, entitled "An act to secure to mechanics and others
80 payment for their labor and materials in erecting any building," approved March 11th, 1853, and the supplements thereto, a lien upon a certain building and lot of land of the said Charles L. Sicher, therein described, as follows: The said building is a two-and-a-half-story frame building, a distillery, twenty-five feet by one hundred feet, on a lot or curtilage situate in the city of Elizabeth, county of Union, and State of New Jersey, beginning at the corner formed by the intersection of the northerly side of Butler street with the westerly side of Second avenue, thence northwesterly along said side of Second avenue two hundred feet to the southerly side of Second st.; thence southwesterly along said side of Second street one hundred feet to land of E. G. Brown, thence southeasterly parallel with second avenue two hundred feet to said side of Butler st., thence northeasterly along said side of Butler street one hundred feet, to the place of beginning.

Notice is hereby given that this action is brought to recover the amount due on an account of which the following is a true copy:

81 (Here follows the statement of an account, the items of which run from Sept. 7, 1872, to $264.35, the total amount being $264.35.)

Take notice that judgment will be claimed at the proper time for the above sum of two hundred and sixty-four dollars and thirty-five cents, with interest from Dec'b'r 30th, 1872.

And now, at this day, that is to say, the eighteenth day of June, A. D. eighteen hundred and seventy-three, to which day the said defendant had leave to the declaration aforesaid, to answer comes the said plaintiffs, by their said attorney, before the said judge at Elizabeth aforesaid, and the said defendant, although solemnly called, comes not, but makes default, neither says he anything in bar or preclusion of the action aforesaid against him, whereby the said plaintiffs remain wholly undefended against the said defendant, and ought to recover against the said defendant their damages, &c.

Judgment signed June 18th, 1873.

DAVID A. DEPUE, *Judge.*

82 Whereupon it is considered that the said plaintiffs do recover against the said defendant their damages by the court now here assessed at two hundred and seventy-two dollars and ninety-five cents, and also the sum of f*ou*rty-three dollars and two cents for their costs and charges by them about their suit in this behalf expended by the clerk of the court now here adjudged to them of increase with their assent, which damages, costs, and charges in the whole amount to three hundred and fifteen dollars and ninety-seven cents.

Which is a general judgment, but specially to be made of the lands and premises in said declaration mentioned.

And the said defendant in mercy, &c.

Union Co. Circuit Court.

FERD. BLANCKE, DAVID MULFORD, and JAS. R. ENGLISH,
vs.
CHS. L. SICHER, Defendants.

Fi. fa. de bo et ter. in case on lien.

Returnable Sept. term, 1873.

Levy damages	$272 95
Costs taxed at	43 02
	$315 97

83 Int. from June 18, 1873, till paid, besides sh'ffs ex'n fees.

JOSEPH ALWARD, *Att'y.*

By virtue of the above-stated writ *fieri facias* to me directed, I did sell at public vendue at the court-house in the city of Elizabeth, N. J., on the 24 day of Sept., 1873, (pursuant to advertisement), and one adj. all that tract or parcel of land and premises described in said writ to August Heidritter, he being the highest bidder for the same:

M. C. C.	$1 00
Sale	1 50
Sheriff's fees, levy and return	1 12
Advertising	3 50
Adjournment	11 00
Selling	1 00
Statement	1 00
Commissions	2 00
Affidavit	32
Deed and cl'k	3 00
25 per cent. added	6 36
Printing bill	20 00
	$52 80

L. S. and R. or 2 other Ex. 5.30, 58.10.

84 This is to certify that the above statement is correct; that I did duly advertise and sell the property described in the above-stated execution as required by law, and the proceeds of said sale, after deducting therefrom sheriff's fees, amount to forty-one $\frac{90}{100}$.

SETH B. RYDER, *Sheriff.*

ELIZABETH, *June* 5, '74.

UNION COUNTY, *ss:*

[SEAL.] The State of New Jersey to the sheriff of the county of Union, Greeting:

We command you that of a certain building, and the lot or curtilage whereon the same is erected, described as follows: The said building is a two and a half story frame building—a distillery—twenty-five feet by one hundred feet, on a lot or curtilage situate in the city of Elizabeth, county of Union, and State of New Jersey:

Beginning at the corner formed by the intersection of the northerly side of Butler street, with the westerly side of Second
85 avenue; thence northwesterly along said side of Second avenue two hundred feet to the southerly side of Second street; thence southwesterly along said side of Second street one hundred feet to land of E. G. Brown; thence southeasterly parallel with Second avenue two hundred feet to said side of Butler street; thence northeasterly along said side of Butler street one hundred feet, to the place of beginning, in whosesoever hands the same may be—you cause to be made the sum of three hundred and fifteen dollars and ninety-seven cents, which Ferdinand Blancke, David Mulford, and James R. English, partners, trading under firm name of F. Blancke, lately at our circuit court, holden at Elizabeth, in and for said county of Union, recovered specially against Charles L. Sicher, builder and owner of the building and the curtilage whereon the same is erected, above described, as well for their damages which they have sustained, on occasion of the non-performance of certain promises and undertakings by the said Charles L. Sicher then lately made to the said Ferdinand Blancke, David Mulford, and James R. English, partners as aforesaid, as for their
86 costs and charges by them about their suit in that behalf expended, whereof the said Charles L. Sicher is convicted, as appears to us of record, and which said damages and costs were ordered and adjudged by the judgment of the court to be a lien on said building and the lot or curtilage whereon the same is erected, hereinbefore described, according to the provisions of an act of the Legislature of New Jersey entitled "An act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March 11th, 1853, and the supplements thereto, and were, by the judgment of the said court, ordered to be made specially of the said building and lot or curtilage whereon the same is erected. And have you those moneys before our circuit court aforesaid, at Elizabeth aforesaid, the first Tuesday of September next, to render unto the said Ferdinand Blancke, David Mulford, and James R. English, partners as aforesaid, for their damages aforesaid; and have you then there this writ.

Witness, David A. Depue, Esquire, a judge of our said
87 court, at Elizabeth aforesaid, the twentieth day of June, eighteen hundred and seventy-three.

HENRY R. CANNON, *Clerk.*

JOSEPH ALWARD, *Attorney.*

Endorsed: Union county circuit court. Ferdinand Blanche, David Mulford, and James R. English, partners trading under firm name of F. Blanche, *vs.* Charles L. Sicher. *Fi. fa. de. bo. et ter.* In case on lien. Ret'ble, Sept. term, 1873. Joseph Alward, att'y. Levy damages, $272.95; costs taxed at $43.02—$315.97. Int. from June 18th, 1873, till paid, besides sh'ffs, $—; extra fees, 195.

88 Recorded June 20th, 1873, in Book No. 7 of Executions for Union county on pages 83, &c. Henry R. Cannon, clerk. D'l'd to me June 21st, 1873, at 11.20 a. m. Seth B. Ryder, sheriff. I return this execution, with levy and statement of sale annexed. Seth B. Ryder, sh'ff.

(Here follows exemplification.)

89 To all persons to whom these presents shall come, or whom they may concern: I, Seth B. Ryder, sheriff of the county of Union, in the State of New Jersey, send Greeting:

Whereas, on the nineteenth day of June, A. D. eighteen hundred and seventy-three, a certain writ of *fieri facias* was issued out of the Union county circuit court of the State of New Jersey, directed and delivered to me, Seth B. Ryder, then and still being sheriff of the said county of Union, which said writ is in tne words and to the effect following, that is to say:

UNION COUNTY, *ss:*

[S.] The State of New Jersey to the Sheriff of the county of Union, Greeting:

We command you, that of a certain building and the lot or curtilage whereon the same is erected, described as follows:

The said building is a two and a half story frame dwelling—a distillery—twenty-five feet by one hundred feet, on a lot or curtilage situate in the city of Elizabeth, county of Uunion and State of New Jersey, (here follows a description of the premises
90 in question), in whosesoever hands the same may be, you cause to be made the sum of one thousand eight hundred and fifty-one dollars and fifty-nine cents, which August Heidritter, lately in our circuit court, holden at Elizabeth, in and for said county of Union, recovered specially against Charles L. Sicher, builder and owner of the building and the curtilage whereon the same is erected, above described, as well for his damages, which he has sustained on occasion of the non-performance of certain promises and understandings by the said Charles L. Sicher, then lately made to the said August Heidritter, as for his costs and charges by him about his suit in that behalf expended, whereof the said Charles L. Sicher is convicted as appears to us of record, and which said damages and costs were ordered and adjudged by the judgment of the court to be a lien on said building and the lot or curtilage whereon the same is erected, hereinbefore described, according to the provisions of an act of the Legislature of New Jersey, entitled "An act to secure to mechanics and others payment for their labor and materials in erecting any building," approved
91 March 11th, 1853, and the supplement thereto, and were by the judgment of the said court ordered to be made specially of the said building and lot or curtilage whereon the same is erected, and have you those moneys before our circuit court aforesaid, at Elizabeth aforesaid, the first Tuesday of September next,

to render unto the said August Heidritter for his damages aforesaid, and have you then there this writ.

Witness David A. Depue, Esquire, a judge of our said court, at Elizabeth aforesaid, the nineteenth day of June, in the year one thousand eight hundred and seventy-three.

HENRY R. CANNON, *Clerk.*

JOSEPH ALWARD, *Attorney.*

As by the record of the said writ will more fully appear.

And whereas, on the twentieth day of June, A. D. eighteen hundred and seventy-three, a certain writ of fieri facias was issued out of the Union county circuit court of the State of New Jersey, directed and delivered to me, Seth B. Ryder, then and still being sheriff of the said county of Union, which said writ is in the words and to the effect following; that is to say:

92 UNION COUNTY, *ss:*

[s.] The State of New Jersey to the sheriff of the county of Union, Greeting:

We command you that of a certain building and the lot or curtilage whereon the same is erected, described as follows: The said building is a two and a half story frame building, a distillery, twenty-five feet by one hundred feet, on a lot or curtilage situate in the city of Elizabeth, county of Union, and State of New Jersey, beginning at the corner formed by the intersection of the no-therly side of Butler street with the westerly side of Second avenue, thence northwesterly along said side of Second avenue two hundred feet to the southerly side of Second street; thence southwesterly along said side of Second street one hundred feet to land of E. G. Brown; thence southeasterly parallel with Second avenue two hundred feet to said side of Butler street; thence northeasterly along said side of Butler street one hundred feet to the place of beginning. In whosesoever hands the same may be, you cause to be made the sum of three hundred and fifteen dollars and ninety-seven cents, which Ferdinand Blancke, David Mulford, and
93 James R. English, partners trading under firm name of F. Blancke, lately in our circuit court, holden at Elizabeth, in and for said county of Union, recovered specially against Charles L. Sicher, builder and owner of the building and the curtilage whereon the same is erected, above described, as well for their damages which they have sustained on occasion of the non-performance of certain promises and undertakings by the said Charles L. Sicher, then lately made to the said Ferdinand Blancke, David Mulford, and James R. English, partners as aforesaid, as for their costs and charges by them about their suit in that behalf expended, whereof the said Charles L. Sicher is convicted, as appears to us of record, and which said damages and costs were ordered and adjudged by the judgment of the court to be a lien on said building and the lot or curtilage whereon the same is erected, hereinbefore described, according to the provisions of an act of the Legislature of New Jersey, entitled "An act to secure to mechanics and others payment for their labor

and materials in erecting any building," approved March 11,
94 1853, and the supplements thereto, and were by the judgment
of the said court ordered to be made specially of the said building and lot or curtilage whereon the same is erected, and have you those moneys before our circuit court aforesaid at Elizabeth aforesaid, the first Tuesday of September next, to render unto the said Ferdinand Blancke, David Mulford, and James R. English, partners as aforesaid, for their damages aforesaid, and have you then there this writ.

Witness David A. Depue, Esquire, a judge of our said court, at Elizabeth aforesaid, the twentieth day of June, eighteen hundred and seventy-three.

HENRY R. CANNON, *Clerk.*

JOSEPH ALWARD, *Attorney.*

As by the record of the said writ will more fully appear.

And whereas I, the said Seth B. Ryder, as such sheriff as aforesaid, under and by virtue of the above special writs of *fieri facias*, did in due form of law take and seize all the right, title, and interest of the said defendant in and to the above described land and premises, together with all and singular the rights, liber-
95 ties, privileges, hereditaments, and appurtenances thereunto
belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereof, and all the estate, right, title, and interest, use property, claim, and demand of the said defendant of, in, to, and out of the same.

And whereas I, the said Seth B. Ryder, sheriff, as aforesaid, did in due form of law advertise the said lots of land and premises to be sold under and by virtue of the said special writs of *fieri facias*, at public vendue, to be holden at the court-house in the city of Elizabeth, on Wednesday, the seventeenth day of September, A. D. eighteen hundred and seventy-three, at two o'clock in the afternoon of said day, by setting up five copies, one at least in the city where said property is situate, at least two months preceding the day of sale, which said notices were signed by me, and also by advertising the same in the Elizabeth Daily Monitor and Elizabeth Daily Journal, papers printed and circulated in the county of Union, New Jersey, for four weeks preceding the day of sale, being
two newspapers published nearest the lands aforesaid, and
96 designated for the publication of the laws.

And whereas, on the said seventeenth day of September, A. D. eighteen hundred and seventy-three, I did adjourn said sale to Wednesday, the twenty-fourth day of September, same year, same house and place, at which last-mentioned time and place I did accordingly offer and expose all the estate, right, title, and interest of said defendant in and to the said land and premises above described for sale at public vendue, under and by virtue of the said special writs of *fieri facias.* Whereupon August Heidritter did then and there bid for the estate, right, title, and interest of the said defendant in and to the above-described land *land* and premises the sum of one hundred dollars, and no other person bidding

as much, I did then and there openly and publicly, in due form of law, between the hours of twelve and five in the afternoon, strike off and sell all the estate, right, title, and interest of said defendant
in and to said land and premises for the said sum of one
97 hundred dollars to the said August Heidritter, he being then
and there the highest bidder for the same.

Now, therefore know ye, that I, the said Seth B. Ryder, as such sheriff as aforesaid, under and by virtue of the said special writs of *fieri facias*, and in execution of the power and trust in me reposed, and also for and in consideration of the said sum of one hundred dollars to me in hand paid, the receipt whereof I do hereby acknowledge, and therefrom acquit, exonerate, and forever discharge the said August Heidritter, his heirs, executors, and administrators, have granted, bargained, sold, assigned, transferred, and by these presents do grant, bargain, sell, assign, transfer, and convey unto the said August Heidritter, his heirs and assigns, forever, all and singular the right, title, and interest of said defendant in and to the above-described land and premises so struck off to the said August Heidritter as aforesaid, with the appurtenances, privileges, and hereditaments thereunto belonging or in anywise appertaining,
to have and to hold the same unto the said August Heid-
98 ritter, his heirs and assigns, and to his and their only proper
use, benefit, and behoof forever, was full, ample, and beneficial a manner as by virtue of the said special writs of *fieri facias* I may, can, or ought to convey the same.

And I, the said Seth B. Ryder, for myself, my heirs, executors, and administrators, do hereby covenant, promise, and agree to and with the said August Heidritter, his heirs and assigns, that I have not, as such sheriff as aforesaid, done or caused, suffered or procured to be done any act, matter, or thing whereby the estate hereby intended to be conveyed in and to the said land and premises, with the appurtenances, is, may, or can be charged, changed, altered, or defeated in any way whatsoever.

In witness whereof, I, the said Seth B. Ryder, as such sheriff as aforesaid, have hereto set my hand and seal, this twenty-fourth day of September, in the year of our Lord one thousand eight hundred and seventy-three.

SETH B. RYDER, *Sh'ff.*

Signed, sealed, and delivered in the presence of—words
99 "defendant in and to the" on last line of the 7th page inter-
lined before signing—

N. C. J. ENGLISH.

(Here follows the usual affidavit and acknowledgment.)

(Endorsed): Deed. Seth B. Ryder, sheriff, to August Heidritter. Received in the clerk's office of the county of Union, on the first day of December, 1873, and recorded in Book 84 of Deeds for said county, pages 582 to 587. Henry R. Cannon, clerk. Consideration, $100. Dated Sept. 24th, 1873.

100 District Court of the United States of America for the District of New Jersey, of January Term, in the year one thousand eight hundred and seventy-three.

Before the Honorable John T. Nixon, District Judge.

On the fourth day of February in the year one thousand eight hundred and seventy-three, comes Anthony Q. Keasbey, as the attorney of the United States for the district of New Jersey, in a case of seizure of land under the internal revenue laws of the United States, and informs the court:

That C. Barcalou, collector of internal revenue for the third collection district of the State of New Jersey, heretofore to wit, on the twenty-fourth day of January, in the year one thousand eight hundred and seventy-three, on land within the city of Elizabeth, and within the said collection district, and within the district of New Jersey, seized the following described property for a forfeiture incurred under the laws of the United States, that is to say:

101 Eighty-nine hogsheads of molasses, four barrels of whiskey, seventeen barrels of spirits, thirty barrels of spirits in mash, one barrel of molasses (partly full), sixteen empty hogsheads, twenty-two empty barrels, one boiler, one copper still and copper connection, one copper doubler, one beer tub, worm and worm tub, separated and copper piping, four steam pumps and iron pipe connections, four lengths of hose, two cisterns, seven fermenting tubs, one low wine tub, one dozen lamps, four shovels and sundries, two mash tubs, two desks, six chairs, one sheep skin, carpet, lot of bagging, two window shades, one lounge, four blankets, one stove and pipe, three saccharometers, one hydrometer, five lead faucets, twenty-seven hogsheads of mash, and three hundred and eleven empty hogsheads, being all the personal property found at the distillery of Charles S. Sicher, at Elizabeth, in the county of Union, and in the said district; and the distillery, and all that tract or parcel of land situate in the city of Elizabeth, in the county of Union, and State of New Jersey, beginning at the corner formed by the intersection of the northerly side of Butler street

102 with the westerly side of Second avenue; thence northwesterly along said side Second avenue two hundred feet to the southerly side of Second street; thence southwesterly along said side of Second street one hundred feet to land of Edward G. Brown; thence southwesterly parallel with Second avenue two hundred feet to said side of Butler street; thence northeasterly along said side of Butler street one hundred feet to the place of beginning, being the same premises conveyed to Charles L. Sicher by Edward G. Brown and wife, by deed dated August twentieth, eighteen hundred and seventy-two, and recorded in Book seventy-three of Deeds for Union county, pages ten and eleven.

And also the right, title, and interest of the said Charles L. Sicher in the tract of land and premises adjoining the said distillery on the south, and connected therewith, and used in the manufacture of vinegar in connection with said distillery, and described as follows: Beginning on the northerly side of Butler street distant one hundred

feet westerly from the westerly corner of Butler street and
103 Second avenue; thence northwesterly parallel with Second
avenue two hundred feet to the southerly side of Second street; thence southwesterly along said side of Second street one hundred feet; thence southeasterly parallel with the first mentioned course two hundred feet to the northerly side of Butler street; thence northeasterly along said side of Butler street one hundred feet to the place of beginning, being the same premises demised to the said Charles L. Sicher by Edward G. Brown, by indenture of lease, dated August twentieth, eighteen hundred and seventy-two, for the term of five years, for the sum of one dollar for the said term of five years.

And also all the right, title, and interest of the said Charles T. Sicher in the building and premises used as a rectifying establishment in connection with said distillery, situate on the northerly side of Butler street, beginning at a point on the said side of Butler street in range with the northeasterly side of First avenue, being six hundred feet northeasterly from the eastern line of Second
avenue and running thence northwesterly at right angles to
104 Butler street ninety-three feet; thence southwesterly fifty
feet and forty-seven hundredths to a point distant eighty-six feet two inches northwesterly from Butler street; thence southeasterly parallel with Second avenue eighty-six feet two inches to Butler street, and thence northeasterly along the northerly side of Butler street fifty feet to the place of beginning. Being the same premises agreed to be conveyed to said Charles L. Sicher by — Fairbanks, for the consideration of sixteen hundred dollars, upon which two hundred dollars has been paid, the deed being ready for delivery on payment of the balance of the purchase money, and now has the same in custody within such district as forfeited to the United States for the following causes:

That prior to said seizure taxes were imposed by the provisions of law upon the said distilled spirits, and the same being so subject to the payment of taxes aforesaid, were found by the said collector in the possession and custody, and within the control of the
said Charles L. Sicher, for the purpose of being sold and re-
105 moved by said Charles L. Sicher in fraud of the internal reve-
nue laws, and with design to avoid payment of said taxes against the 48th section of the act of Cengress approved June 30th, 1864, entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," as amended by act of July 13th, 1866.

That the said articles of raw material were found in the possession of said Charles L. Sicher, the said Charles L. Sicher then and there intending to manufacture the same into articles of a kind subject to tax, for the purpose of fraudulently selling such manufactured articles, and with the design to evade the payment of said tax against the 48th section aforementioned, as amended as aforesaid.

That the said tools, implements, and personal property were found in the place or building, and within certain yards and enclosures were said distilled spirits and said raw materials were found as aforesaid, whereby they became liable to forfeiture by the provisions of the 48th section aforesaid, as amended as aforesaid.

106 That prior to said seizure tax was imposed on said distilled spirits, and said materials, utensils, and vessels, then and there being materials, utensils, and vessels proper, and intended to be made use of for and in the making of such distilled spirits, taxed as aforesaid, were removed, and were deposited and concealed, with intent to defraud the United States of such tax, or of some part thereof, against the 14th section of the act of July 13th, 1866, entitled "An act to reduce internal taxation," and to amend an act entitled "An act to provide internal revenue to support the Government, to pay interest on the public debt, and for other purposes," approved June 30, 1864, and the acts amendatory thereof.

That the said barrels, vessels, and packages were sold and given and purchased and received to and by Charles L. Sicher, the said barrels, vessels, and packages, then and there being stamped, branded, and marked in such a way as to show that the contents or intended contents thereof, have been duly inspected, and that the tax thereon had been paid, and that certain provisions
107 of the internal revenue laws had been complied with, the
said barrels and packages then and there contained something other than the contents which were therein when said articles were so stamped, branded, and marked, contrary to the 16th section of said last-mentioned act.

That the said distilled spirits being spiritous liquors were by Charles L. Sicher shipped, transported, and removed, and by said Charles L. Sicher caused to be shipped, transported, and removed under other than the proper names and brands known to the trade as designating the kind and quality of the contents of the casks and packages containing the same, contrary to the 29th section of said last-mentioned act.

That upon the said casks and packages containing or purporting to contain distilled spirits, said Charles L. Sicher did, with fraudulent intent, use certain inspector's brands and plates, and did knowingly make and use certain counterfeit and spurious brands and plates on the said casks and packages, contrary to the 38th section of the last-mentioned act.

108 That said Charles L. Sicher, being then and there the owner of said distilled spirits, did execute and sign, and did fraudulently procure to be executed, and did connive at the execution of certain false and fraudulent bonds, permits, entries, and other documents required by law and regulations in force on the 6th day of July, 1866, relating to, and purporting to relate to the said distilled spirits, by which the payment of certain internal revenue taxes was evaded, and attempted to be evaded, and which were executed as aforesaid, and purported to be executed, for the purpose of placing in, and of withdrawing from, a certain bonded warehouse the said distilled spirits, and which were used and attempted to be used in fraud of the internal revenue laws and regulations, contrary to the 42d section of said last-mentioned act.

That the said distilled spirits being found elsewhere than in a
bonded warehouse, were sold and offered for sale at a less price
than the tax imposed by law thereon, whereby they became
109 forfeited by the 21st section of the act of Congress approved
March 20, 1867, entitled "An act to amend existing laws relating to internal Revenue, and for other purposes."

That said still and distilling apparatus then and there having been set up, and said personal property were found in the possession and custody and under the control of said Charles L. Sicher, which said Charles L. Sichar did neglect and refuse to register said still and distilling apparatus with the assistant assessor of the division in which they were set up within sixty days from the 20th day of July, 1868; and that said personal property was found in the building, and in the yard and enclosure connected with the building in which said still and distillery apparatus was set up, against the 5th section of the act of Congress approved July 20th, 1868, entitled "An act imposing taxes on distilled spirits and tobacco, and for other purposes."

That said distillery and distilling apparatus, and the real estate and
premises connecsed therewith, were used and occupied by the
110 said Charles L. Sicher then and there doing the business of a
distiller, which said Charles L. Sicher did neglect and refuse to
make and execute the bond required by law, conditioned upon his faithful compliance with all the provisions of law in relation to the duties and business of distillers, and upon the payment of all penalties incurred and fines imposed on him or them for violation of said provisions, and upon his not suffering the lot or tract of land on which said distillery stood, or any part thereof, or any of the distillery apparatus, to be encumbered by mortgage, judgment, or other lien during the time in which he should carry on said business; and that said Charles L. Sicher did neglect and refuse to renew said bond, and did give a certain bond, which was then and there false, forged, and fraudulent, against the 7th section of said last-mentioned act.

That some person or persons, to said attorney unknown, manufactured said stills, boilers, and other vessels, to be used for the pur-
pose of distilling, which said person or persons did neglect
111 and refuse, before the same were removed from the place of
manufacture, to notify, in writing, the assessor of the district
in which such stills, boilers, and other vessels were to be used and set up, by whom the same were to be used, the capacity of the same, and the time when the same were to be removed from the place ot manufacture, against the 14th section of said last-mentioned act.

That some person or persons, to said attorney unknown, did set up said stills, boilers, and other vessels without first obtaining a permit, in writing, for that purpose from the assessor of the district in which such stills, boilers, and other vessels were intended to be used, contrary to the said 14th section last mentioned.

That said Charles L. Sicher made and distilled distilled spirits, and owned said stllls, boilers, and other vessels used for the purpose of distilling spirits, and had such stills, boilers, and other vessels so used under his superintendence as owner, and used such

stills, boilers, and other vessels, which said Charles L. Sicher neglected and refused to make and caused to be made from day to day in a book or books kept by him in form
112 prescribed by the commissioner of internal revenue true and exact entries of the kind of materials, and of the quantity in pounds, bushels, and gallons purchased, and by what conveyance delivered at said distillery, and of the amount paid therefor, and of the quantity and kind of fuel purchased for use in said distillery, and from whom purchased, and of the amount paid for ice and water for use in the said distillery, and of the repairs placed on said distillery and distilling apparatus, and of the cost thereof, and by whom and when made, and of the name and residence of each person employed in and about the distillery, and in what capacity they were employed. And that said Charles L. Sicher neglected and refused to make true and exact entries from day to day in a book or books of the quantity of grain and other material used for the production of spirits, and of the time of day when yeast and other compositions were put into mash and beer for the purpose of exciting fermentation, and of the quantity of mash in each tub, and of the gravity and temperature of the beer at the time of yeasting,
113 and on every day thereafter at the hour of twelve meridian, and of the time when the fermenting tubs, and each of them, were emptied of ripe mash and beer, and of the number of gallons of spirits distilled, and of the number of gallons placed in warehouse, and of the proof thereof, and of the number of gallons sold and removed, with the proof thereof, and of the name, place of business, and residence of the person or persons to whom said spirits were sold.

And that said Charles L. Sicher did make false entries in said books in each and all of the foregoing particulars, and did omit entries therefrom with intent to defraud and conceal from the revenue officers certain facts and particulars herein referred to, required to be stated and entered in said books, and to mislead in reference thereto, and did cancel, obliterate, and destroy said books, and a portion of said books, and certain entries therein, and did permit the same to be done with intent to defraud, and did neglect and refuse to produce, and cause to be produced, said books, and
114 each of them, when required by a certain revenue officer, against the 19th section of the last-mentioned act.

That Charles L. Sicher did carry on the business of a distiller on the premises where said distilled spirits, still, and apparatus, and other personal property were found, and that said Charles L. Sicher did, on the —— day of ——, 187—, give notice in writing to the assistant assessor of the division wherein said business was carried on that he would suspend work on the —— day of ——, 187—, and did, after said —— day of ——, carry on the business of distiller on said premises, and did have mash, wort, and beer in said distillery, and in the premises connected therewith, with intent to distil the same on said premises, the said Charles L. Sicher not having given notice in writing to the assessor of the district wherein his said business was carried on of an intention to resume work in said distillery, against the 22d section of the last mentioned act.

That said distilled spirits were found elsewhere than in a distillery warehouse, not having been removed therefrom according to
115 law, against the 36th section of said last mentioned act.

That the said distilled spirits were removed in casks and packages containing more than ten gallons each from the premises and buildings in which the same had been distilled, redistilled, rectified, compounded, manufactured, and stored at certain times other than after sunrising and before sunsetting, against the 37th section of last mentioned act.

That the said distilled spirits and the said still and other apparatus being fit and intended to be used for the distillation and rectification of spirits, and for the compounding of liquors, were owned by said Charles L. Sicher, who carried on the business of distiller without having paid the special tax as required by law, and who carried on the business of a distiller without having given bond as required by law, and who was engaged in and carried on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by said Charles L. Sicher, against the 44th section of said last mentioned act.

116 That the said distilled spirits and personal property were found in a certain distillery and rectifying establishment, and in the place of business of Charles L. Sicher and in a certain building, room, yard, and enclosure connected therewith, and used with and constituting a part of the premises, and that Charles L. Sicher did, in said distillery, said rectifying establishment, and in the place of business of said compounder, carry on then and there the business of distiller, rectifier, compounder of liquors, wholesale liquor dealer and retail liquor dealer, without having paid the special tax as required by law, and did carry on the business of a distiller without having given bond as required by law, and did engage in and carry on the business of a distiller, with intent to defraud the United States of the tax on the spirits distilled by him, against the said 44th section of said last mentioned act.

That Charles L. Sicher, then and there having a certain right, title, and interest in the lot and tract of land on which said distillery was situted, did knowingly carry on the business of a
117 distiller upon the said premises, and did connive at the carrying on of the said business, without having paid the special tax as required by law, and without having given bond as required by law, and with intent to defraud the United States of the tax on spirits distilled by him, against the said 44th section of said last mentioned act.

That said personal property was owned by, and was found in the possession of, the said Charles L. Sicher, in a certain building, yard, and enclosure, which said Charles S. Sicher permitted and suffered the said building, yard, and enclosure to be used for purposes of ingress and egress to and from said distillery, at the city of Elizabeth, in said district, wherein he did carry on the business of a distiller, without having paid the special tax required by law, and

without having given bond as required by law, and with intent to
defraud the United States of the tax on the spirits distilled by him,
whereby said personal property, and the right, title, and in-
118 terest of said Charles L. Sicher, so permitting and suffering
as aforesaid, became forfeited to the United States, under
and by virtue of the said 44th section of said last-mentioned act.

That the said distilled spirits, then and there having been drawn from certain casks and packages, and placed in certain other casks and packages containing not less than ten gallons, and then and there intended for sale, were not again inspected and gauged, and the said casks and packages into which said distilled spirits were transferred were not marked and branded, and did not then and there bear marks and brands so as distinctly to indicate the name of the gauger, the time and place of inspection, the proof of said spirits, the particular name of such spirits as known to the trade, and the name and place of business of the dealer, rectifier, and compounder, against the 47th section of said last-mentioned act.

That said distilled spirits were drawn from certain casks and
packages, and placed in certain other casks and packages contain-
ing not less than ten gallons each, and intended for sale, and
119 the same not having been rectified and compounded, were
contained in casks and packages which bore no marks or
brands indicating the name of the distiller and the distillery where
said spirits were produced, and the serial number of the original
package in which said spirits were contained, against the said 47th
section of said last-mentioned act.

That said distilled spirits were found in a bonded warehouse, wherein they had remained for a period of more than nine months after the passage of said last-mentioned act, to wit, for more than nine months after the 20th day of July, 1868, against the 56th section of said last-mentioned act.

That the said distilled spirits being intended for sale, and exceed-
ing fifty gallons in quantity, and not being in a bonded warehouse
on the 20th day of July, 1868, were owned and held by said Charles
L. Sicher, who neglected and refused to make a return under oath
to the collector of the district wherein said spirits were held, stating
the number and kind of packages together with the marks and
brands thereon, and the place where the same were stored,
120 and the quantity of said spirits against the 57th section of
said last-mentioned act.

That said distilled spirits were found after more than thirty days from the 20th day of July, 1868, in certain casks and packages containing more than five gallons each, without having thereon the marks and stamps required by the said last mentioned act against said 57th section of said last-mentioned act.

That Charles L. Sicher did simulate, and falsely execute and sign a certain bond, permit, entry, and other document required by the provisions of said act of July 20, 1868, and by regulations made in pursuance thereof, and did procure the same to be falsely and fraudulently executed, and did advise, aid in, and connive at the execution thereof, and that said bond, permit, entry, and other document relates to said distilled spirits against the 99th section of said last-mention act.

And the said attorney of the United States, on behalf of the United States saith that all and singular the premises are true, and that by reason thereof and by force of the statute in such case made and provided, the aforementioned goods, wares, and merchandise and said vinegar establishment, rectifying establishment, distillery, and real estate and premises, became and are forfeited to the use in the said statutes provided.

121 Wherefore he prays that due process issue in that behalf, as well of attachment to bring the said property within the custody of the court as of monition to all parties in interest, to appear on the return of such process, and duly intervene herein by claim and plea to the premises; and due proceedings being had thereon, that for the causes aforesaid the goods, wares, and merchandise, and said vinegar establishment, rectifying establishment, and said distillery, and real estate and premises be condemned by decree of forfeiture, and the proceeds of the sale, or such other disposition thereof as the court shall direct, distributed according to law.

ANTHONY Q. KEASBEY,
United States Attorney for the District of New Jersey.

(Endorsed:) U. S. district court, district of New Jersey. The United States of America *vs.* Eighty-nine Hogsheads of Molasses, Four Barrels of Whiskey, Seventeen Barrels of Spirits and other Property, and the Distillery, Vinegar Establishment, Rectifying Establishment, Lands and Premises of Charles L. Sicher, at Eliz-
122 abeth, Union county, New Jersey. Information. Section 48, act June 30th, 1864, and acts amendatory; sections 14, 16, 29, 38, 42, act July 13th, 1866, and acts amendatory; section 21, act March 2, 1867; sections 5, 7, 14, 19, 22, 36, 37, 44, 47, 56, 57, act July 20, 1868. Anthony Q. Keasbey, U. S. attorney, dist. N. J. Filed February 4, 1873. R. C. Belville, clerk.

DISTRICT OF NEW JERSEY:

The President of the United States to the marshal of the district of New Jersey, Greeting:

Whereas an information hath been filed in the district court of the United States for the district of New Jersey, on the fourth day of February, 1873, by Anthony Q. Keasbey, Esquire, attorney of the United States for the said district on behalf of the United States of America, against eighty-nine hogsheads of molasses,
123 four barrels of whiskey, seventeen barrels of spirits, thirty barrels of spirits in mash, one barrel of molasses (partly full), sixteen empty hogsheads, twenty-two empty barrels, one boiler, one copper still and copper connections, one copper doubler, one beer tub, worm and worm tub, separated and copper piping, four steam pumps and iron pipe connections, four lengths of hose, two cisterns, seven fermenting tubs, one low wine tub, one dozen lamps, four

shovels and sundries, two mash tubs, two desks, six chairs, one sheepskin, carpet, lot of bagging, two window shades, one lounge, four blankets, one stove and pipe, three saccharometers, one hydrometers, five lead faucets, twenty-seven hogsheads of mash, and three hundred and eleven empty hogsheads, being all the personal property found at the distillery and upon the premises of Charles L. Sicher, distiller, at Elizabeth, in the county of Union, in the said district, together with the distillery and all that tract or parcel of land situate in the city of Elizabeth, in the county of Union and State of New Jersey, beginning at the corner formed by the intersection of the northerly side of Butler street with the westerly
124 side of Second avenue; thence northwesterly along said side
of Second avenue two hundred feet to the southerly side of Second street; thence southwesterly along said side of Second street one hundred feet to land of Edward G. Brown; thence southeasterly parallel with Second avenue two hundred feet to said side of Butler street; thence northeasterly along said side of Butler street one hundred feet to the place of beginning, being the same premises conveyed to said Charles L. Sicher by Edward G. Brown and wife, by deed dated August twentieth, eighteen hundred and seventy-two, and recorded in book seventy-three of deeds for Union county, pages ten and eleven; and also all the right, title, and interest of the [said] Charles L. Sicher in the tract of land and premises adjoining the said distillery on the south and connected therewith and used in the manufacture of vinegar in connection with said distillery and described as follows: Beginning on the northerly side of Butler street, distant one hundred feet westerly from the westerly corner of Butler street and Second avenue; thence northwesterly parallel
125 with Second avenue two hundred feet to the southerly side of
Second street; thence southwesterly along said side of Second street one hundred feet; thence southeasterly parallel with the first mentioned course, two hundred feet to the northerly side of Butler street; thence northeasterly along said side of Butler street one hundred feet to the place of beginning; being the same premises demised to the said Charles L. Sicher, by Edward G. Brown, by indenture of lease dated August twentieth, eighteen hundred and seventy-two, for the term of five years, for the sum of one dollar for the said term of five years.

And also all the right, title, and interest of the said Charles L. Sicher in the building and premises used as a rectifying establishment in connection with said distillery, situate on the northerly side of Butler street, in range with the northeasterly side of First avenue, being six hundred feet northeasterly from the easterly line of Second avenue, and running thence northwesterly at right angles to Butler street ninety three feet; thence southwesterly fifty feet and
126 forty-seven hundredths to a point distant eighty-six feet
two inches northwesterly from Butler street; thence southeasterly parallel with Second avenue eighty-six feet two inches to Butler street, and thence northeasterly along the northerly side of Butler street fifty feet to the place of beginning; being the same premises agreed to be conveyed to said Charles L. Sicher by — Fair-

banks for the consideration of sixteen hundred dollars, upon which, two hundred bollars has been paid, the deed being ready for delivery on payment of the balance of the purchase money, for reasons and causes in the said information mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said goods, wares, and merchandise, and said distillery, vinegar establishment, rectifying establishment, and said lands and premises may be cited in general and special to answer the premises; and all due proceedings being had, that the said goods, wares, and merchandise, and said distillery, vinegar establishment, rectifying establishment, and said lands and premises may, for the causes in the said information mentioned, be condemned as forfeïted to the use of the United
127 States.

You are therefore hereby commanded to attach the said goods, wares, and merchandise, and said distillery, vinegar establishment, rectifying establishment, and said land and premises, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned as forfeited according to the prayer of the said information, that they be and appear before the said court, to be held at Trenton, in and for the district of New Jersey, on the twenty-fifth day of February, instead, if the same shall be a day of jurisdiction, otherwise the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf; and what you shall have done in the premises do you then and there make return thereof, together with this writ.

128 Witness the Honorable John T. Nixon, judge of said court, at Trenton, in the district of New Jersey, this fifth day of February, in the year of our Lord eighteen hundred and seventy-three, and of our Independence the ninety seventh.

[L. S.] R. C. BELVILLE, *Clerk.*

A. Q. KEASBEY, *U. S. Attorney.*

I have taken possession of the within-named property (except so much as a mistake appears to have been made in the inventory, there being only eighteen hhds. of molasses instead of eighty-nine), and have given due notice to all persons claiming the same to appear, &c.

Feb. 19, 1873.

JOHN C. BAILEY,
D. U. S. Marshal.

129 (Endorsed:) U. S. district court, district of New Jersey. The United States *vs.* Eighty-nine Hogsheads of Molasses, Four Barrels of Whiskey, Seventeen Barrels of Spirits, and other property, and the Distillery, Vinegar Establishment, Rectifying Establishment, Lands, and Premises of Charles L. Sicher, at Elizabeth, Union county, New Jersey. Warrant of arrest, &c. Re-

turnable February 25th, 1873. A. Q. Keasbey, U. S. district attorney. Received and filed Feb'y 19, 1873. R. C. Belville, cl'k.

At at stated term of the district court of the United States of America for the district of New Jersey, held at Trenton, on the twenty-fifth day of February, in the year one thousand eight hundred and seventy-three.

Present: The Honorable John T. Nixon, judge.

130 THE UNITED STATES *vs.* EIGHTY-NINE HOGSHEADS OF MOLASSES, Four Barrels of Whiskey, Seventeen Barrels of Spirits, and other property, and the Distillery, Vinegar Establishment, Rectifying Establishment, Land and Premises of Charles L. Sicher, at Elizabeth, Union County, New Jersey. } On Information.

The monition issued in this cause having been heretofore returned, and the usual proclamation having been made, and the default of all persons being duly entered, it is thereupon, on motion of Anthony Q. Keasbey, Esquire, attorney of the United States, ordered, sentenced, and decreed by the court now here, and his honor, the district judge, by virtue of the power in him vested, doth hereby order, sentence, and decree, that the personal property and real estate mentioned in the libel in this cause, be and the same accordingly are, condemned as forfeited to the United States.

And upon like motion it is further ordered, sentenced, and decreed, that the clerk of this court issue a writ of execution 131 to the marshal of the district, returnable upon the third Tuesday of April next, commanding him to sell the said personal and real estate.

And that upon the return thereof, the clerk distribute the proceeds according to law.

JNO. T. NIXON, *J.*

(Endorsed:) United States district court, district of New Jersey. The United States *vs.* Eighty-Nine Hogsheads of Molasses, &c., & the Distillery, &c. of Charles L. Sicher. On information for forfeiture. Final Decree. A. Q. Keasber, U. S. Dist. Att'y. Filed Feb'y 25, 1873. R. C. Belville, cl'k.

132 DISTRICT OF NEW JERSEY, *ss.*

[L. S.] The President of the United States of America to the marshal of the district of New Jersey, Greeting:

Whereas an information was filed in the district court of the United States for the district of New Jersey on the fourth day of February, in the year one thousand eight hundred and seventy-three, against eighty-nine hogsheads of molasses, four barrels of whiskey, seventeen barrels of spirits, thirty barrels of spirits in mash, one barrel of molasses (partly full), sixteen empty hogsheads,

twenty-two empty barrels, one boiler, one copper still and copper connections, one copper doubler, one beer tub, worm and worm tub, separater and copper piping, four steam pumps and iron pipe connections, four lengths of hose, two cisterns, seven fermenting tubs, one low wine tub, one dozen lamps, four shovels and sundries, two mash tubs, two desks, six chairs, one sheep skin, carpet, lot of bagging, two window shades, one lounge, four blankets, one stove
133 and pipe, saccharometers, one hydrometer, five lead faucets,
twenty-seven hogsheads of mash, and three hundred and eleven empty hogsheads, being all the personal property found at the distillery of Charles L. Sicher at Elizabeth, in the county of Union, and in the said district, and the following described land and premises: All that tract or parcel of land situate in the city of Elizabeth, in the county of Union and State of New Jersey, beginning at the corner formed by the intersection of the northerly side of Butler street with the westerly side of Second avenue, thence northwesterly along said side of Second avenue two hundred feet to the southerly side of Second street, one hundred feet to land of Edward G. Brown, thence southeasterly parallel with Second avenue two hundred feet to said side of Butler street, thence northeasterly along said side of Butler street one hundred feet to the place of beginning, being the same premises conveyed to said Charles L. Sicher by Edward G. Brown and wife by deed dated August twentieth, eighteen hundred and seventy-two, and recorded
134 in book seventy-three of deeds forUnion county, pages ten and eleven.

And also all the right, title, and interest of the said Charles L. Sicher in the tract of land and premises adjoining the said distillery on the south, and connected therewith, and used in the manufacture of vinegar in connection with said distillery, and described as follows: Beginning on the northerly side of Butler street distant one hundred feet westerly from the westerly corner of Butler street and Second avenue. Thence northwesterly parallel with Second avenue, two hundred feet to the southerly side of second street. Thence southwesterly along said side of Second street one hundred feet. Thence southeasterly parallel with the first-mentioned course, two hundred feet to the northerly side of Butler street. Thence northeasterly along said side of Butler street, one hundred feet to the place of beginning, being the same premises demised to the said Charles L. Sicher by Edward G. Brown, by indenture of lease dated August twentieth, eighteen hundred and seventy-two,
135 for the term of five years, for the sum of one dollar, for the said term of five years.

And also all the right, title, and interest of the said Charles L. Sicher, in the building and premises used as a rectifying establishment in connection with said distillery, situate on the northerly side of Butler street. Beginning at a point in the said side of Butler street, in range with the northeasterly side of First avenue, being six hundred feet northeasterly from the easterly line of Second avenue, and running thence northwesterly at right angles to Butler street, ninety-three feet. Thence southwesterly fifty feet and forty-

seven hundredths to a point distant eighty-six feet two inches, northwesterly from Butler street. Thence southeasterly parallel with Second avenue, eighty-two feet six inches to Butler street, and thence northeasterly along the northerly side of Butler street, fifty feet to the place of beginning. Being the same premises agreed to be conveyed to said Charles L. Sicher by — Fairbanks, for the consideration of sixteen hundred dollars, upon which two hundred
136 dollars has been paid, the deed being ready for delivery on payment of the balance of the purchase money, praying that the same may be condemned and sold for causes alleged in the said information.

And whereas the said personal and real estate have been attached by the process issued out of the said district court, in pursuance of the said information, and are now in custody by virtue thereof; and such proceedings have been thereupon had, that by the final sentence and decree of said court, in the cause made and pronounced on the twenty-fifth day of February, one thousand eight hundred and seventy-three, the said personal and real estate are condemned and ordered to be sold by you, the said marshal, after giving due notice of such sale, according to law. Therefore you, the said marshal, are hereby commanded, to cause the said goods, chattels, and personal property, and also the said lands and premises hereinbefore described, so condemned, to be sold in manner and form, upon the notice and at the time and place by law required. And that you have the moneys arising from such sale in said
137 court at Trenton, on the third Tuesday of April, one thousand eight hundred and seventy-three, and that you then pay the same to the clerk of the court; and have you also then and there this writ.

Witness the Honorable John T. Nixon, judge of the said court, at the city of Trenton, in the district of New Jersey, this tenth day of March, in the year of our Lord one thousand eight hundred and seventy-three, and of our Independence the ninety-seventh.

R. C. BELVILLE, *Clerk.*

A. Q. KEASBEY, *U. S. District Att'y.*

Recorded March 10th, 1873, in Book A of Executions, page 53, &c., in the clerk's office of the United States court for the district of New Jersey.

R. C. BELVILLE, *Cl'k.*

By virtue of the within writ I have sold the within de-
138 scribed lands and tenements to Edward G. Brown; the amount of said sale was fifteen hundred dollars, which amount I have this day forwarded to the clerk of said court.

JOHN C. BAILEY,
D. U. S. Marshal.

JUNE 9, 1873.

(Endorsed:) United States district court, district of New Jersey. The United States *vs.* Eighty-nine Hogsheads of Molasses, &c., and the Distillery, &c., of Charles L. Sicher. On information for forfeiture. Execution. Ret'ble April term, 1873. A. Q. Keasbey, U. S. dist. att'y.

139 *Order of Distribution.*

United States of America, District of New Jersey.

THE UNITED STATES
vs.
89 HHDS. MOLASSES, &c., AND THE REAL ESTATE OF CHARLES L. SICHER, at Elizabeth, N. J.

The property heretofore condemned by the decree of the court in this cause having been sold by the marshal, and the sum of sixty-four hundred forty-four dollars and sixty-five cents ($6,444.65), being the proceeds of said sale, having been heretofore paid bythe marshal into the registry of the court, and the costs of this suit having been duly taxed at thirty-three hundred ninety-four dollars and forty-one cents ($3,394.41):

It is thereupon ordered that the clerk of this court do pay and distribute the said proceeds in manner following, viz:

To the clerk of this court, for his costs in this suit, the sum of eighty-four dollars and sixty-nine cents ($84.69).

To the district attorney, for his costs, the sum of one hundred twenty-eight dollars and eighty-nine cents ($128.89).

140 To the marshal*l*, for his costs, the sum of thirty-one hundred eighty dollars and thirty-three cents, including twenty-two hundred twenty-two $\frac{50}{100}$ dollars paid by him for revenue stamps ($3,180.83), and the balance of said proceeds, being the sum of three thousand and fifty dollars and twenty-four cents ($3,050.24) to Culver Barcalow, collector of internal revenue for the third district, for the use of the United States.

JNO. T. NIXON, *J.*

(Endorsed.:) United States district court, district of New Jersey. The United States *vs.* 89 Hhds. Molasses, &c., and the Real Estate of Charles L. Sicher, at Elizabeth, N. J. Decree of distribution. Filed June 14, 1873. [illegible]. C. Belville, cl'k.

141 *Advertisement of Marshal's Sale.*

In the District Court of the United States for the District of New Jersey.

UNITED STATES
vs.
EIGHTY-NINE HOGHEADS OF MOLASSES, &c., AND THE DISTILLERY, &c., of Charles L. Sicher.

By virtue of a *venditioni exponas*, to me directed from the above court in the above-entitled matter, I will sell at public auction, on Thursday, 22d day of May, 1873, at Elizabethport, in the county of Union, in the district aforesaid, at eleven o'clock a. m., on the premises, all the right, title, and interest of Charles L. Sicher aforesaid in the following-described land and premises:

All that tract or parcel of land situate in the city of Elizabeth, in the county of Union and State of New Jersey, beginning at the corner formed by the intersection of the northerly side of Butler street with the westerly side of Second avenue, thence northwesterly along said side of Second avenue two hundred feet to 142 the southerly side of Second street, thence southwesterly along said side of Second street one hundred feet to land of Edward G. Brown, thence southeasterly parallel with Second avenue two hundred feet to said side of Butler street, thence northerly along said side of Butler street one hundred feet to the place of beginning. Being the same premises conveyed to said Charles L. Sicher, by Edward G. Brown and wife, by deed dated August twentieth, eighteen hundred and seventy-two, and recorded in book seventy-three of deeds for Union county, pages ten and eleven; and, also, all the rights, title, and interest of the said Charles L. Sicher in the tract of land and premises adjoining the said distillery on the south, and connected therewith and used in the manufacture of vinegar in connection with said distillery, and described as follows: Beginning on the northerly side of Butler street distant one hundred feet westerly from the westerly corner of Butler street and Second avenue, thence northwesterly parallel with Second avenue two hundred feet to the southerly side of Second street, thence southwesterly along said side of Second street one hundred 143 feet, thence southeasterly parallel with the first-mentioned course two hundred feet to the northerly side of Butler street, thence northeasterly along said side of Butler street one hundred feet to the place of beginning, being the same premises demised to the said Charles L. Sicher by Edward G. Brown by indenture of lease, dated August twentieth, eighteen hundred and seventy-two, for the term of five years, for the sum of one dollar for the said term of five years.

And also all the right, title, and interest of the said Charles L. Sicher in the building and premises used as a rectifying establishment in connection with said distillery, situate on the northerly side of Butler street, beginning at a point in the said side of Butler street, in range with the northeasterly side of First avenue, being six hundred feet northeasterly from the easterly line of Second avenue, and running thence northwesterly at right angles to Butler street ninety-three feet; thence southwesterly fifty feet and forty-seven-hundredths to a point distant eighty-six feet two inches northwesterly from Butler street; thence southeasterly along the northerly side of Butler street fifty feet to the place of beginning; 144 being the same premises agreed to be conveyed to said Charles L. Sicher by Fairbanks for the consideration of sixteen hundred dollars, upon which two hundred dollars has been paid, the deed being ready for delivery on payment of the balance of the purchase money.

SAMUEL PLUMMER, *U. S. Marshal.*
Per JOHN C. BAILEY, *Deputy.*

145 *Samuel Plummer to Edward G. Brown.*

This indenture, made this twenty-ninth day of May, A. D. eighteen hundred and seventy-three, between Samuel Plummer, United States marshal for the district of New Jersey, of the one part, and Edward G. Brown, of the town of Elizabeth, county of Union, and State of New Jersey, of the other part, witnesseth: That "whereas an information was filed in the district court of the United States for the district of New Jersey on the fourth day of February, in the year one thousand eight hundred and seventy-three, against Eighty-nine Hogsheads of Molasses, &c.,—

(Here follows a description of the personal property and real estate as set forth and described in the information.)

praying that the same may be condemned and sold for causes alleged in the said information; and whereas the said personal and real estate have been attached by the process issued out of the said district
146 court in pursuance of the said information, and are now in custody by virtue thereof, and such proceedings have been thereupon had; that by the final sentence and decree of the said court in this cause made and pronounced on the twenty-fifth day of February, one thousand eight hundred and seventy-three, the said personal and real estate are condemned and ordered to be sold by you, the said marshal, after giving due notice of such sale according to law. Therefore you, the said marshal, are hereby commanded to cause the said goods, chattels, and personal property, and also the said lands and premises hereinbefore described, so condemned to be sold in manner and form upon the notice and at the time and place by law required, and that you have the moneys arising from such sale in said court at Trenton on the third Tuesday of April, one thousand eight hundred and seventy-three, and that you then pay the same to the clerk of the court, and have you also then and there this writ as by reference to said writ recorded in Book A of Executions, folios 53, &c., in the clerk's office of the United States district court
147 for the district of New Jersey, as by reference thereto will fully appear. And whereas the said Samuel Plummer, U. S. marshal, as aforesaid, by virtue of the above writ to him directed and delivered, did advertise the land and premises described in the above writ for sale at public vendue, on Thursday, the twenty second day of May, A. D. eighteen hundred and seventy-three, on the premises, at Elizabethport, in the county of Union and State of New Jersey, at eleven o'clock a. m. of said day, by advertisements signed by himself and put up at five or more public places in the said county of Union, one whereof was in the township where the said land lies, at least two months before the time appointed for selling the same, and also published in two of the newspapers printed and published in this State, and circulating in the neighbourhoood of said lands, at least four weeks successively once a week next preceeding the said time, and at the time and place so advertised did expose the same to sale by public vendue, and the said Edward G. Brown then and there bidding therefor the

148 sum of fifteen hundred dollars, and no one bidding so much or more, the said lands and premises was on the day last aforesaid struck off and sold to him for the price aforesaid, according to the form of the statute in such case made and provided.

Now this indenture witnesseth, that the said Samuel Plummer, United States marshal of the district aforesaid, for the consideration of the said sum of fifteen hundred dollars to him paid, the receipt whereof is hereby acknowledged, hath, and by these presents doth, grant bargain, sell, and convey unto the said Edward G. Brown, his heirs and assigns, all the right, title, and interest of the defendant, Charles L. Sicher, of, in, and to all the hereinbefore described several tracts of land and premises, with the hereditaments and appurtenances. To have and to hold unto the said Edward G. Brown, his heirs and assigns, as fully as the said Charles L. Sicher was seized of or entitled unto at or before the sentence or decree aforesaid, to the only proper use of the said Edward G. Brown, his heirs and assigns forever. And the
149 said Samuel Plummer, U. S. marshal, as aforesaid, doth covenant and agree with the said Edward G. Brown, his heirs and assigns, that he, the said Samuel Plummer, U. S. marshal, as aforesaid, hath not done or suffered to be done any act or thing whereby the said premises, or any part thereof, are or may be changed or encumbered in estate, title, or otherwise.

In witness whereof, the said Samuel Plummer, U. S. marshal, as aforesaid, hath hereunto set his hand and seal, the day and year first aforesaid.

[SEAL.] SAMUEL PLUMMER,
U. S. Marshal, Dist. New Jersey.

Sealed and delivered in the presence of—
BENJAMIN F. WOOD.

(Here follows the usual acknowledgment and affidavit of the marshal.)

(Here follows the exemplification.)

(Endorsed:) Samuel Plummer to Edward G. Brown. Deed.

150 UNITED STATES OF AMERICA, }
District of New Jersey, } *ss:*

I, S. D. Oliphant, clerk of the United States circuit court for the district of New Jersey, do hereby certify the foregoing to be a true copy of the judgments and transcript of the record and proceedings in said entitled cause, as the same remain of record and on file in my office at Trenton, in said district.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Trenton, in said district, this sixth day of October, A. D. eighteen hundred and eighty-one.

[SEAL.] S. D. OLIPHANT, *Clerk.*

151 Circuit Court of the United States, District of New Jersey.

AUGUST HEIDRITTER, Pl'ff,
ag'st.
THE ELIZABETH OIL CLOTH COMPANY, Def't. } In Ejectment.

STATE OF NEW YORK,
City and County of New York, } *ss:*

Edward G. Brown, being duly sworn, says that he is one of the directors of the defendant corporation above named, and for more than twenty years last past he has resided, and still resides, in the city of Elizabeth, New Jersey, near the premises in controversy in this action; that he is familiar with the values of property in said city, and especially with the values of property in the immediate vicinty of said property in controversy; that in his opinion said premises in controversy were worth at the commencement of this action, and are now worth, the sum of one hundred thousand dollars.

E. G. BROWN.

Subscribed and sworn to before me, a notary public for the State of New York, duly authorized to take affidavits, &c., in the city of New York, this 25th day of October, 1881.

[SEAL.] THOMAS VICKERY,
Notary Public, N. Y. Co.

151½ Endorsed: Supreme Court U. S., 1881. October Term. No. 1014. August Heidritter, pl'ff in error, *vs.* The Elizabeth Oil Cloth Company. Affidavit of value. Filed 29th October, 1881.

152 AUGUST HEIDRITTER *vs.* THE ELIZABETH OIL CLOTH CO.

DISTRICT OF NEW JERSEY, *ss:*

Frederick L. Heidritter, being duly sworn according to law, says that he is familiar with the property in dispute in the above stated cause, and with the values of property in the neighborhood thereof, that the matter in dispute, exclusive of costs, exceeds the sum or value of five thousand dollars, and deponent further says that its value is over ten thousand dollars.

FREDERICK L. HEIDRITTER.

Sworn to, this 29th day of April, A. D. 1881.

[SEAL.] HOWARD RICHARDS,
United States Commissioner for New Jersey.

153 (Endorsed): Supreme Court U. S. 1881, October term. No. 1014. August Heidritter, Plaintiff in Error, *vs.* The Elizabeth Oil Cloth Company. Affidavit of value. Filed 29th Oct., 1881.

(Endorsed on cover:) New Jersey C. C. U. S. No. 381. August Heidritter, Plaintiff in Error, *vs.* The Elizabeth Oil Cloth Company. Filed 11 October, 1881.

112-794

SECTIONS OF THE INTERNAL REVENUE LAWS RELATING TO FORFEITURES OF REAL ESTATE.

ACT OF JULY 20, 1868.—(15 *Stat.* 125.)

Sec. 7. (15 *St.* 127.) "*And be it further enacted*, That every distiller shall, on filing his notice of intention to continue or commence business with the assessor before proceeding with such business, after the passage of this act and on the first day of May of each succeeding year, make and execute a bond in form prescribed by the Commissioner of Internal Revenue, with at least two sureties, to be approved by the assessor of the district. The penal sum of said bond shall not be less than double the amount of tax on the spirits that can be distilled in his distillery during a period of fifteen days; but in no case shall such bond be for a less sum than five thousand dollars. The condition of the bond shall be that the principal shall faithfully comply with all the provisions of law in relation to the duties and business of distillers, and will pay all penalties incurred or fines imposed on him for a violation of any of the said provisions; that he will not suffer the lot or tract of land on which the distillery stands, or any part thereof, or any of the distilling apparatus, to be encumbered by mortgage, judgment or other lien during the time in which he shall carry on said business. * * * Any person failing or refusing to give the bond hereinbefore required, or to renew the same, or giving any false, forged or fraudulent bond, shall forfeit the distillery, distilling apparatus, and all real estate and premises connected therewith, and, on conviction, shall be fined not less than five hundred dollars, nor more than five thousand dollars, and imprisoned not less than six months, nor more than two years."

(By act of June 6, 1872, [17 *Stat.* 239,] this section was amended by striking out the words "but in no case shall such bond be made for a less sum than five thousand dollars.")

(This is section 3260, Revised Statutes.)

Sec. 8. (15 *St.* 127.) "*And be it further enacted*, That no bond of a distiller shall be approved unless he is the owner in fee, unencumbered by any mortgage, judgment, or other lien, of the lot or tract of land on which the distillery is situated, or unless he files with the assessor, in connection with his notice, the written consent of the owner of the fee, and of any mortgagee, judgment creditor, or other person having a lien thereon, duly acknowledged, that the premises may be used for the purpose of distilling spirits, subject to the provisions of law, and expressly stipulating that the lien of the United States for taxes and penalties shall have priority of such mortgage, judgment or other encumbrance, and that in case of the forfeiture of the distillery premises, or any part thereof, the title of the same shall vest in the United States discharged from any such mortgage, judgment, or other encumbrance. In any case where the owner of a distillery or distilling apparatus, erected prior to the passage of this act, has an estate for a term of years only, in the lot or tract of land on which the distillery is situated, the lease or other evidence of title to which shall have been duly recorded prior to the passage of this act, the value of such lot or tract of land, together with the building and distilling apparatus, shall be appraised in the manner to be prescribed by the Commissioner of Internal Revenue; and the assessor is hereby authorized to accept, in lieu of the said written consent of the owner of the fee, the bond of said distiller with not less than two sureties, who shall be residents of the collection district or county, or an adjoining county in the same State, in which the distillery is situated, and shall be the owners of unencumbered real estate in said district or county, or adjoining county, equal to such appraised value. The penal sum of said bond shall be equal to the appraised value of said lot or tract of land, together with the buildings and distilling apparatus, and such bonds shall be conditioned that in case the distillery, distilling apparatus, or any part thereof, shall, by final judgment, be forfeited for the violation of any of the provisions of law, the obligors will pay the amount stated in said bond. Said bond shall be in such form as the Commissioner of Internal Revenue shall prescribe."

This section was amended by an act approved April 10, 1869, (16 *Stat.* 41,) as follows, viz:

"That section 8 be amended so that in case of a distiller[y] or distilling apparatus erected prior to the twentieth of July, eighteen hundred and sixty-eight, on a tract or lot of land held under a lease or other evidence of title less than fee simple, which was not required by the laws of the State to be recorded in order to be valid at the time of its execution, or in any case where the title was then and has continued to be in litigation, or where the owner is possessed of the fee, but encumbered with a mortgage executed and duly recorded prior to the said twentieth of July, eighteen hundred and sixty-eight, and not due, or where the fee is held by a femme covert, minor, person of unsound mind, or other person incapable of giving consent as required by said act, a bond may be taken at the discretion of the Commissioner, as provided for in said section for a distillery erected on land the lease or other evidence of title to which was duly recorded prior to the passage of this act; *Provided*, That nothing herein contained shall be so construed as to apply to any distillery or distilling apparatus not erected prior to the twentieth of July, eighteen hundred and sixty-eight."

The act of June 6, 1872, Ch. 315, § 13, (17 *Stat.* 243,) adds the following: "*Provided further*, That in case of distilleries sold at judicial and other sales in favor of the United States, a bond may be taken at the discretion of the Commissioner of Internal Revenue in lieu of the written consent required by such section, and the person giving such bond may be allowed to operate such distillery during the existence of the right of redemption from such sale, on complying with all other provisions of law."

(This is section 3262, Revised Statutes.)

Sec. 19. (15 *St.* 132.) "*And be it further enacted*, That every person making or distilling spirits, or owning any still, boiler, or other vessel used for the purpose of distilling spirits, or having such still, boiler, or other vessel so used under his superintendence, either as agent or owner, or using any such still, boiler, or other vessel, shall, from day to day, make, or cause to be made, true and exact entry in a book or books, to be kept by him, in such form as the Commissioner of Internal Revenue may prescribe, of the kind of materials, and the quantity in pounds, bushels, or gallons purchased by him for the production of spirits, from whom and when purchased, &c.," (and then provides for the keeping of two books, the making of certain entries therein and the rendering of accounts; and requires that the books be open to inspection at any time, and that they be preserved two years.) "And if any such false entry shall be made, or any entry shall be omitted therefrom with intent to defraud or to conceal from the revenue officers any fact or particular required to be stated and entered in either of said books, or to mislead in reference thereto, or if any distiller as aforesaid shall omit or refuse to provide either of said books, or shall cancel, obliterate, or destroy any part of either of such books, or any entry therein, with intent to defraud, or shall permit the same to be done, or such books, or either of them, be not produced when required by any revenue officer, the distillery, distilling apparatus, and the lot or tract of land on which it stands, and all personal property of every kind and description on said premises used in the business there carried on, shall be forfeited to the United States. And any person making such false entry or omitting to make any entry hereinbefore required to be made, with the intent aforesaid, or who shall cause or procure the same to be done, or who shall fraudently cancel, obliterate or destroy any part of said books, or any entry therein, or who shall wilfully fail to produce such books or either of them, shall on conviction be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years."

(This section was amended by act of July 6, 1872, section 12, [17 *Stat.* 240,] but the changes do not affect so much of the section as is above set forth.)

(This is sections 3303, 3304 and 3305, of Revised Statutes.)

Sec. 22. (15 *St.* 134.) "*And be it further enacted*, That every distiller, at the hour of twelve, meridian, on the third day after that on which his bond shall have been approved by the assessor, shall be deemed to have commenced, and thereafter to be continuously engaged in the production of distilled spirits in his distillery, except in the intervals when he shall have suspended work as hereinafter authorized or provided. Any distiller desiring to suspend work in his distillery may give notice in writing to the assistant assessor of his division stating when he will suspend work; and on the day mentioned in said notice said assistant assessor shall, at the expense of the distiller, proceed to fasten securely the door of every furnace of every still or boiler in said distillery, by locks and otherwise, and shall adopt such other means as the Commissioner of Internal Revenue shall prescribe, to prevent the lighting of any fire in such furnace or under such stills or burners.

* * * No distiller, after having given such notice, shall, after the time stated therein, carry on the business of a distiller on said premises until he shall have given another notice in writing to said assessor, stating the time when he will resume work and at the time so stated for resuming work the assistant assessor shall attend at the distillery to remove said locks and other fastenings; and thereupon, and not before, work may be resumed in said distillery, which fact shall be immediately reported to the assessor of the district, and by him transmitted to the Commissioner of Internal Revenue. Any distiller, after the time fixed in said notice declaring his intention to suspend work, who shall carry on the business of a distiller on said premises, or shall have mash, wort, or beer in his distillery, or on any premises connected therewith, or who shall have in his possession or under his control any mash, wort, or beer,

with intent to distil the same on said premises, shall incur the forfeitures and be subject to the same punishment as provided for persons who carry on the business of a distiller without having paid the special tax."

(By act of June 6, 1872, section 12, [17 *Stat.* 240,] this section was amended by striking out the words "having paid the special tax," and inserting in lieu thereof the words "having given the bond required by law," and by adding the following: "*Provided*, That nothing in this section shall be held to apply to suspensions caused by unavoidable accident: and the Commissioner of Internal Revenue shall prescribe rules and regulations to govern in such cases of involuntary suspension.")

(This is section 3310, of Revised Statutes.)

Sec. 44. (15 *St.* 142.) "*And be it further enacted*, That any person who shall carry on the business of a distiller, rectifier, compounder of liquors, wholesale liquor dealer, retail liquor dealer, or manufacturer of stills, without having paid the special tax, as required by law, or who shall carry on the business of a distiller without having given bond as required by law, or who shall engage in or carry on the business of a distiller, with intent to defraud the United States of the tax on the spirits distilled by him, or any part thereof, shall, for every such offence, be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years. And all distilled spirits or wines, and all stills or other apparatus, fit or intended to be used for the distillation or rectification of spirits or for the compounding of liquors, owned by such person, wherever found, and all distilled spirits or wines and personal property found in the distillery or rectifying establishment, or in the store or other place of business of the compounder, or in any building, room, yard, or enclosure connected therewith, and used with or constituting a part of the premises; and all the right, title, and interest of such person in the lot or tract of land on which such distillery is situated, and all right, title, and interest therein of every person who knowingly has suffered or permitted the business of a distiller to be there carried on, or has connived at the same; and all personal property owned by or in possession of any person who has permitted or suffered any building, yard, or enclosure, or any part thereof, to be used for purposes of ingress or egress to or from such distillery which shall be found in any such building, yard, or enclosure, and all the right, title, and interest of every person in any premises used for ingress or egress to or from such distillery, who has knowingly suffered or permitted such premises to be used for such ingress or egress, shall be forfeited to the United States."

(By act of June 6, 1872, section 12, [17 *Stat.* 240,] this section was amended "by striking out the word 'distiller,' where it first occurs therein.")

(This is section 3281, of Revised Statutes.)

112-294

STIPULATION OF COUNSEL AND ADDITION TO RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 69.

AUGUST HIEDRITTER, PLAINTIFF IN ERROR,

vs.

THE ELIZABETH OIL CLOTH COMPANY.

FILED OCTOBER 23, 1884.

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UNITED STATES SUPREME COURT.

October Term, 1884.

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1 In error to the Circuit Court of the United States for the District of New Jersey.

August Heidritter, Plaintiff in Error,
vs.
The Elizabeth Oil-Cloth Company, Defendant in Error. } No. 69.

The above cause having been originally commenced by the plaintiff in error against the defendant in error in the supreme court of the State of New Jersey, and having been removed by the defendant to the circuit court of the United States for said district, and the clerk of the said circuit court having omitted in his return to the writ of error to send up the removal papers as filed with him, it is hereby stipulated that the papers in the removal proceedings in this cause shall be sent up by the clerk of said circuit court to the clerk of the Supreme Court, and the same be filed and constitute a part of the record in this cause.

Dated October 18, '84.
EDWARD A. DAY,
Attorney for Pl'ff in Error.
WILLIAM R. WILSON,
Att'y for Def't in Error.

[Endorsed:] August Heidritter, plaintiff in error, *vs.* The Elizabeth Oil-Cloth Company, defendant in error. In error to U. S. circuit court for district of N. J. Stipulation. Edward A. Day, att'y. Office Supreme Court U. S. Filed Oct. 23, 1884. James H. McKenney, clerk.

2 *Additional Return.*

United States Supreme Court.

In error to the Circuit Court of the United States for the District of New Jersey.

August Heidritter
vs.
The Elizabeth Oil-Cloth Company. } In Error.

3 New Jersey, *ss:*

[L. S.] The State of New Jersey to the sheriff of the county of Hudson, Greeting:

We command you to summon The Elizabeth Oil-Cloth Company, a corporation of the State of New Jersey, to appear before our supreme court, at Trenton, on the eleventh day of March next, to answer to the complaint of August Heidritter, who demands of them the possession of a tract of land, with the appurtenances, situated in the city of Elizabeth, in the county of Union, and State of New Jersey, more particularly described as follows, to wit:

Beginning at the corner formed by the intersection of the northerly side of Butler street with the westerly side of Second avenue; thence northwesterly along said side of Second avenue two hundred feet, to the southerly side of Second street; thence southwesterly along said side of Second street one hundred feet to land now or late of E. G. Brown; thence southeasterly parallel with Second avenue two hundred feet to said side of Butler street; thence
4 northeasterly along said side of Butler street one hundred
feet to the place of beginning.

And in default of their appearing and defending this action, judgment will be entered against them, and they will be turned out of possession of said land. And have you then there this writ.

Witness, Mercer Beasley, esquire, chief justice, at Trenton, the twenty-fourth day of February, eighteen hundred and seventy-nine.

BENJAMIN F. LEE, *Clerk.*

EDWARD A. DAY, *Attorney.*

I direct that this writ be served upon the defendants by giving a copy thereof to their president personally, or by leaving a copy thereof at his place of abode at least ten entire days before its return; and in case he cannot be found in this State, and has no dwelling house or usual place of abode in this State, then a copy hereof shall be served on the clerk or secretary of the defendants, if any there be in this State, and if no clerk or secretary, then on one of the directors of the defendant corporation, by giving him
5 a copy personally, or by leaving it at his usual place of abode
at least ten entire days before its return.

B. VAN SYCKEL,
Jus. Sup. Ct. of N. J.

NEW JERSEY, } *ss:*
Hudson County. }

Cornelius J. Cronan, being duly sworn, on his oath saith that he is the under sheriff of said county of Hudson; that on the twenty-sixth day of February, eighteen hundred and seventy-nine, at Jersey City, in said county, he served the annexed summons in ejectment on The Elizabeth Oil-Cloth Company, the defendants therein named, by leaving a copy thereof at the place of abode of John A. Bouker, the president of said company, with Sarah E. Bouker, the wife of said John A. Bouker, and at the same time deponent informed said Sarah of the intent and meaning of said summons and service.

J. C. CRONAN,
Under Sheriff.

Subscribed and sworn to, at Jersey City, February 28, 1879, before me.

WM. G. BUMSTEAD,
Notary Public, N. J.

6 New Jersey Supreme Court, of the twenty-fourth day of February, in the year of our Lord one thousand eight hundred and seventy-nine.

UNION COUNTY, *ss:*

August Heidritter, the plaintiff in this action, by Edward A. Day, his attorney, demands of The Elizabeth Oil-Cloth Company, the defendants therein, the possession of a tract of land, with the appurtenances, situated in the city of Elizabeth, in the county of Union and State of New Jersey, more particularly described as follows, to wit: Beginning at the corner formed by the intersection of the northerly side of Butler street with the westerly side of Second avenue; thence northwesterly along said side of Second avenue two hundred feet to the southerly side of Second street; thence southwesterly along said side of Second street one hundred feet to land now or late of E. G. Brown; thence southeasterly parallel with Second avenue two hundred feet to said side of Butler street; thence northeasterly along said side of Butler street one hundred feet to the
7 place of beginning.

And the plaintiff says that his right to the possession of the same accrued on the first day of December, eighteen hundred and seventy-three, and that the defendants wrongfully deprive him of the possession thereof, to his damage five thousand dollars.

EDWARD A. DAY,
Attorney of Plaintiff.

Endorsed: Notice is hereby given that, unless the defendants within named shall appear and file a plea or demurrer within thirty days after the service hereof, judgment will be entered against them. Dated March 11th, 1879. Edward A. Day, att'y for pl'ff. Filed March 11, 1879. Benj. F. Lee, clerk.

8 New Jersey Supreme Court.

THE ELIZABETH OIL-CLOTH COMPANY
ads. } In Ejectment.
AUGUST HEIDRITTER.

Upon motion of Frank Bergen, attorney of the defendant in the above-stated cause, notice of which was given, it is hereby ordered that the defendant have thirty days in addition to the time limited by law, to plead or demur to the declaration filed in the above-stated cause.

Entered April 5th, 1879, on motion of Frank Bergen. Dated April 5th, 1879.

B. VAN SYCKEL,
Jus. Sup. Ct.

New Jersey Supreme Court.

THE ELIZABETH OIL-CLOTH COMPANY *ads.* AUGUST HEIDRITTER. } In Ejectment.

By consent, this day filed, it is ordered that the defendant have until the fifth day of June next in which to plead.

Entered May 12, 1879, on motion of—

FRANK BERGEN, *Att'y.*

9 *Plea.*

New Jersey Jupreme Court, Union County.

THE ELIZABETH OIL CLOTH COMPANY *adsm.* AUGUST HEIDRITTER. } In Ejectment.

And the said, The Elizabeth Oil-Cloth Company, by W. R. Wilson, its attorney, appears and defends this action, and says that it is not guilty of the injury whereof the said August Heidritter hath complained in his declaration, nor of any part thereof, and of this it puts itself upon the country, and the said August Heidritter doth the like.

W. R. WILSON,
Att'y for Def't.

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

Edward G. Brown, being duly sworn, according to law, upon his oath says, that he is one of the directors of The Elizabeth Oil-Cloth Company, the defendant in this action; that the foregoing plea by the said defendant pleaded is not intended for the purpose of delay; that this affiant verily believes that the said defendant hath a just and legal defence to said action on the merits of the case. 10

E. G. BROWN.

Subscribed and sworn to before me, the subscriber, a commissioner for New Jersey, duly authorized by the laws thereof to take the acknowledgement of deeds and affidavits, in New York, this 4th day of June, 1879, as witness my hand and official seal.

[L. S.] CHARLES NETTLETON,
Commissioner for New Jersey in New York.

Endorsed: Filed June 4, 1879. Benj. F. Lee, cl'k.

Petition for Removal to the Circuit Court of the United States.

New Jersey Supreme Court, Union County.

11 THE ELIZABETH OIL-CLOTH COMPANY, Defendant,
ads.
AUGUST HEIDRITTER, Plaintiff.
} In Ejectment.

To the supreme court of the State of New Jersey:

The petition of The Elizabeth Oil-Cloth Company, the defendant above named, respectfully shows:

That the above entitled suit or action is a suit or action in ejectment commenced in the New Jersey supreme court by August Heidritter, the plaintiff above named, against The Elizabeth Oil-Cloth Company, your petitioner, as defendant, to recover the possession, as appears by the declaration in said suit, of a lot or tract of land, with the appurtenances, situated in the city of Elizabeth, county of Union and State of New Jersey, more particularly described as follows, to wit· Beginning at the corner formed by the intersection of the
northerly side of Butler street with the westerly side of second
12 avenue; thence northwesterly along said side of second avenue two hundred feet to the southerly side of Second street; thence southwesterly along said side of Second street one hundred feet to land now or late of E. G. Brown; thence southeasterly parallel with Second avenue two hundred feet to said side of Butler street; thence northeasterly along said side of Butler street one hundred feet to the place of beginning.

Your petitioner further shows that the plaintiff is a resident of the city of Elizabeth, in the State of New Jersey, and your petitioner is a corporation duly organized under the laws of said State.

That the amount in dispute in the said suit or action exceeds, exclusive of costs, the sum or value of five hundred dollars, and that the said suit is one arising under the laws of the United States in this, to wit:

Your petitioner is in possession of and holds the said lot or tract
of land above described by and under title derived from an
13 officer of the United States, acting under and by authority of a revenue law of the United States, and claims its said title under and by virtue of said revenue law.

That its said title to said lot or tract of land is derived as follows, viz:

On the 24th day of January, A. D. 1873, the said lot or tract of land, and the building situated thereon, used and known as a distillery, with the appurtenances and certain personal property, were seized by C. Barcalow, as collector of internal revenue of the United States for the third collection district of New Jersey, for and on account of violations of the internal revenue laws of the United States, committed thereon by Charles L. Sicher, who then appeared of record to be the owner thereof, and who was then carrying on the business of a distiller thereon.

Thereupon, and on the 4th day of February, A. D. 1873, an information was filed in the clerk's office of the district court of the United States for the district of New Jersey, against the said lot or
tract of land, and the distillery thereon and the appurte-
14 nances thereto, and said personal property, alleging viola-
tions of section 44 of the act of Congress approved July
20th, 1868, and of other sections of the same, and other acts of Congress, committed by the said Charles L. Sicher on said lot or tract of land, in prosecution of his said business as distiller.

That such proceedings were thereupon had that, on the 25th day of February, A. D. 1873, the said lot or tract of land, with the distillery thereon and the appurtenances thereto, and the said personal property, were decreed by the said district court to be condemned as forfeited to the United States; and it was further decreed that a writ of execution issue to the marshal of the district commanding him to sell the said lot or tract of land, distillery, appurtenances, and personal property.

That a writ of execution was accordingly issued, out of and under the seal of said court, directed to Samuel Plummer, United States
marshal of said district, and that under and by virtue of said
15 writ the said Samuel Plummer, as United States marshal, sold
the said lot or tract of land, distillery, appurtenances, and
personal property.

That upon such sale Edward G. Brown became the purchaser, whereupon a deed, in due form of law, was made, acknowledged, and delivered by the said Samuel Plummer, as United States marshall, conveying to said Brown the said lot or tract of land, and the distillery situated thereon, and the appurtenances thereto.

That said deed bears date the 29th day of May, 1873, and was recorded June 7th, 1873, in Liber 81 of Deeds for Union County, at pages 301, etc.

That after several mesne conveyances, the said lot or tract of land was conveyed to your petitioner by Joseph A. Minot and wife, by their deed bearing date the 15th day of October, 1878, and recorded October 17th, 1878, in Liber 130 of Deeds for Union County, at pages 375, &c., and that your petitioner is now in possession of the
same, claiming under title derived as above set forth.

16 Your petitioner further shows that the plaintiff herein
claims title to said lot or tract of land, as appears by his Bill
of Particulars in this action, under proceedings alleged by him to have been taken, as follows, viz:

On the 21st day of February, 1873, (subsequently to the seizure above set forth,) August Heidritter, the plaintiff herein, filed a lien claim in the clerk's office of Union county, New Jersey, against Charles L. Sicher, as builder and owner, claiming a lien on the lot or tract of land, hereinbefore described, and the distillery situated thereon, for the sum of seventeen hundred and eleven dollars and twenty-two cents, the alleged value of labor performed and materials furnished, at the request of said Sicher, between the 21st day of February, 1872, and the 21st day of February, 1873, for the erection of said distillery.

Subsequently, and on the 13th day of March, 1873, Ferdinand Blancke, David Mulford, and James R. English, partners, trading under firm name of F. Blancke, filed a lien claim in the
17 clerk's office of Union county, New Jersey, against said Sicher, as builder and owner, claiming a lien on the lot or tract of land above described, and the distillery situated thereon, for the sum of two hundred and sixty-four dollars and thirty-five cents, the alleged value of labor performed and materials furnished, at the request of said Sicher, between the 15th day of March, 1872, and the 15th day of March, 1873, for the erection of said distillery.

That said claims were subsequently enforced and general judgments thereon, but special to be made of the lot or tract of land above described, were subsequently entered against said Sicher at the following times, viz: On June 14th, 1873, on the claim first above described, and on June 18th, 1873, on the claim secondly above described.

That under special writs of *fieri facias* issued on said judgments the said lot or tract of land was subsequently sold by the sheriff of the county of Union and a deed thereof made by him to August Heidritter, the plaintiff herein, which deed bears date the
18 24th day of September, 1873, was acknowledged the 10th day of October, 1873, and recorded the 1st day of December, 1873, in liber 84 of Deeds for Union county, at pages 582, &c.

Your petitioner further shows that the question in issue in this cause is, whether, under the laws of the United States, the forfeiture of said lot or tract of land and the distillery situated thereon, to the United States, the seizure thereof by the collector of internal revenue, the decree of forfeiture, and the sale by the United States marshal in accordance therewith, as above set forth, were effectual to divest the liens above mentioned, under which the plaintiff herein claims title, if any such liens ever existed.

Your petitioner claims that, by force and effect of the said laws of the United States, the said forfeiture and subsequent proceedings thereunder, were so effectual, and that the deed of the United States marshal to Edward G. Brown, under whom your petitioner claims title, executed and delivered as aforesaid, conveyed the said lot or tract of land to said Brown, free and clear from said alleged liens,
19 and that the proceedings which plaintiff claims to have taken under said alleged liens, including the alleged deed of the sheriff of Union county to said plaintiff, were void and of no effect.

Your petitioner further shows that issue was joined in this cause by the filing of defendant's plea on the 4th day of June, 1879; that said cause has not been tried, and that there has been no term of this court at which said cause could have been tried.

And your petitioner offers herewith a bond, with good and sufficient surety, for its entering in the circuit court of the United States for the district of New Jersey, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court, if said court shall hold that this suit was wrongfully or improperly removed thereto.

20 Your petitioner therefore prays this honorable court to proceed no further herein (except to make such order in the premises as may be required by law), and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States in and for the district of New Jersey.

And your petitioner will ever pray, &c.

Dated August 22d, 1879.

ELIZABETH OIL-CLOTH COMPANY,
By JOHN A. BOUKER, *Pres't.*
W. R. WILSON,
Att'y for Def't, Pet'r.

STATE OF NEW YORK, }
City & County of New York, } *ss:*

John A. Bouker, being duly sworn according to law, upon his oath, says: That he is the president of The Elizabeth Oil-Cloth Company, the petitioner above named; that he has read the foregoing petition, and knows the contents thereof; and that the statements and allegations therein contained are true, as he verily believes.

JOHN A. BOUKER.

21 Subscribed and sworn to before me, the undersigned, a commissioner for the State of New Jersey, duly authorized by the laws thereof to take the acknowledgment of deeds, etc., in New York, this 22d day of August, 1879, as witness my hand and official seal.

[L. S.] CHARLES NETTLETON,
Commissioner for New Jersey in New York.

Endorsed: New Jersey supreme court, Union county. The Elizabeth Oil-Cloth Company, def't, *ads.* August Heidritter, pl'ff. Petition*al* for removal to United States circuit court. W. R. Wilson, att'y for def't.

22 Know all men by these presents, that The Elizabeth Oil-Cloth Company, a corporation duly organized under the laws of the State of New Jersey, as principal, and Edward G. Brown, of the city of Elizabeth, in the county of Union, and State of New Jersey, and Frank N. Brown, of the said city, county, and State, as sureties, are held and firmly bound unto August Heidritter, of the said city of Elizabeth, in the penal sum of one thousand dollars, the payment whereof well and truly to be made unto the said August Heidritter, his heirs, and assigns we bind ourselves, our successors, heirs, representatives, and assigns, jointly and severally, firmly by these presents;

Yet upon these conditions: The said Elizabeth Oil-Cloth Company having petitioned the supreme court of the State of New Jersey for the removal of a certain cause therein pending, wherein August Heidritter is plaintiff and The Elizabeth Oil-Cloth Company defendant, to the circuit court of the United States in and for the district of New Jersey:

Now, if the said Elizabeth Oil-Cloth Company shall enter in the said
circuit court of the United States in and for said district, on the first
day of its next session, a copy of the record in said suit, and
23 shall well and truly pay all costs that may be awarded by
said circuit court of the United States, if said court shall hold
that said suit was wrongfully or improperly removed thereto, then
this obligation to be void, otherwise in full force and virtue.

In witness whereof, the said company has caused this bond to be signed by its president and treasurer, and a seal to be hereto affixed, and the said Edward G. Brown and Frank N. Brown have hereto set their hands and seals, this 23d day of August, 1879.

THE ELIZABETH OIL-CLOTH COMPANY,
By JOHN A. BOUKER, *Pres't.* [L. S.]
E. G. BROWN. [L. S.]
F. N. BROWN. [L. S.]
G. F. HAWKES, *Treas.*
In presence of—
ALFRED S. BROWN.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Edward G. Brown, of the city of Elizabeth, in the county of
Union, and State of New Jersey, one of the sureties named in the
foregoing bond, being duly sworn, do depose and say that I
24 am a resident of the State of New Jersey and a property
holder therein; that I am worth the sum of five thousand dollars over and above all my debts and liabilities, and exclusive of property by law exempt from execution; that I have property in the State of New Jersey liable to execution of the value of more than five thousand dollars.

E. G. BROWN.

Subscribed and sworn to before me, the undersigned, a commissioner for the State of New Jersey, duly authorized by the laws thereof to take the acknowledgment of deeds, etc., in New York, this 23d day of August, 1879, as witness my hand and official seal.

[L. S.] CHARLES EDGAR MILLS,
A Commissioner for the State of New Jersey in New York.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

I, Frank N. Brown, of the city of Elizabeth, in the county
25 of Union and State of New Jersey, one of the sureties named
in the foregoing bond, being duly sworn, do depose and say
that I am a resident of the State of New Jersey and a property holder therein; that I am worth the sum of five thousand dollars over and above all my debts and liabilities, and exclusive of property by law

exempt from execution; that I have property in the State of New Jersey liable to execution of the value of more than five thousand dollars.

F. N. BROWN.

Subscribed and sworn to before me, the undersigned, a commissioner for the State of New Jersey, duly authorized by the laws thereof to take the acknowledgment of deeds, etc., in New York, this 23d day of August, 1879, as witness my hand and official seal.

[L. S.] CHARLES NETTLETON,
Commissioner for New Jersey in New York.

26 STATE OF NEW JERSEY, *ss:*

I, Benjamin F. Lee, clerk of the supreme court of the State of New Jersey, do hereby certify that the annexed is a full and true copy of the record in the suit entitled as within, on file in the office of the clerk of the supreme court of the State of New Jersey.

Witness my hand and official seal this 26th day of August, in the year one thousand eight hundred and seventy-nine.

[L. S.] BENJ. F. LEE, *Cl'k.*

[Endorsed:] New Jersey supreme court, Union county. The Elizabeth Oil-Cloth Company, def't, *ads.* August Heidritter, pl'ff. In ejectment. Copy of record and certificate. W. R. Wilson, att'y, for deft. Filed Sept. 1, 1879. S. D. Oliphant, clerk.

27 UNITED STATES OF AMERICA, } *ss:*
District of New Jersey, }

I, S. D. Oliphant, clerk of the circuit court of the United States for the district of New Jersey, do hereby certify that the foregoing is a full, true, and complete transcript of the "copy of record and certificate" in the cause of August Heidritter against The Elizabeth Oil-Cloth Company, removed from the New Jersey supreme court into this court, as fully as the same appears on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Trenton, in said district, this eighteenth day of October, A. D. 1884.

[SEAL.] S. D. OLIPHANT, *Clerk.*

112-294

Supreme Court of the United States.

No. 69, October Term, 1884.
(No. 381, October Term, 1883.)

AUGUST HEIDRITTER,
Plaintiff in Error.
vs.
THE ELIZABETH OIL CLOTH COMPANY,
Defendant in Error.

In Error to the Circuit Court of the United States for the District of New Jersey.

BRIEF FOR PLAINTIFF IN ERROR.

EDWARD A. DAY,
JOHN R. EMERY,
Counsel for Plaintiff in Error.

NEWARK, N. J.:
WARD & TICHENOR, LAW CASE PRINTERS, 832 & 834 BROAD ST.
1884.

Ward & Tichenor, Law Case Printers, 832 and 834 Broad St., Newark, N. J.

Supreme Court of the United States.

AUGUST HEIDRITTER, *Plaintiff in Error,* *vs.* THE ELIZABETH OIL CLOTH COMPANY, *Defendant in Error.*	*In Ejectment.* *On Writ of Error to the Circuit Court of the United States, for the District of New Jersey.*

BRIEF FOR PLAINTIFF IN ERROR.

I.

STATEMENT.

This is a writ of error brought upon a judgment rendered in the Circuit Court of the United States, for the District of New Jersey, in favor of the defendant in error, the defendant below, in an action of ejectment, brought against the defendant by the plaintiff in error, also the plaintiff below, for the recovery of certain lands and premises situated in the city of Elizabeth, in the county of Union and State of New Jersey, (described on p. 3, fol. 7.)

The issues in the cause were tried by the Court without a jury, pursuant to written waiver, (p. 4, fol. 9,) and the finding of facts by the Court was special, (p. 5, fol. 11.) The questions on appeal relate to the correctness of the ruling of the Judge upon the admission of evidence under exception, and also to the sufficiency of the facts as found to warrant the judgment in favor of the defendant.

The plaintiff's chain of title to the premises is fully set forth in his bill of particulars filed in the cause, (p. 14, fol. 38 to p. 18, fol. 49.)

The defendant's chain of title is set forth in its bill of particulars, (p. 18, fol. 49 to p. 20. fol. 55.)

Both parties claim title to the premises through one Charles L. Sicher, who purchased the same from Edward G. Brown, by deed dated August 20, 1872, (p. 5, fol. 11,) the plaintiff under a judgment and sale on certain mechanics' lien proceedings under the State statute against said Sicher and the premises; the defendant under a decree of condemnation and sale in certain forfeiture proceedings brought by the United States District Attorney for a violation of the Internal Revenue laws of the United States.

Upon the trial it appeared that while Charles L. Sicher was in possession of the premises, and before he had received a deed for the premises from Brown, he, on June 25, 1872, commenced the erection of a building thereon, (p. 5, fol. 12, and p. 9, fol. 23.)

Heidritter, the plaintiff, furnished materials in the erection of said building from June 21, to August 23, 1872. Sicher having failed to pay for said materials, the plaintiff filed a claim in the clerk's office of Union county, February 21, 1873, within the year allowed by law, for $1,711.22, the price of said materials furnished in the erection of said building, and on the same day commenced suit in the Circuit Court of Union county, by issuing summons for the enforcement of said claim, and such proceedings were had in said suit that on June 14, 1873, judgment was entered therein, this judgment being, according to the lien laws of New Jersey, a general judgment against Sicher, and also a special judgment directing that the amount thereof be made out of the building and lands liened against, (p. 5, fol. 13; p. 15, fol. 40; p. 21, fol. 57.)

One Ferdinand Blancke and others, as partners, likewise, from September 7, to December 30, 1872, furnished materials for the same building, and on March 13, 1873, filed in the clerk's office of Union county another mechanics' lien claim against the same premises for $264.35, and on March 15, 1873, began suit by issuing summons in the said Circuit Court for the enforcement of said claim, and such proceedings were had in said suit that judgment general and special, as in the Heidritter case, was entered June 18, 1873, (p. 5, fol. 13; p. 17, fol. 45; p. 28, fol. 77.) Under these judgments special writs of *fieri facias*, pursuant to the provisions of the lien law, were severally issued to the sheriff of Union county; the premises in question were levied upon, and on September 24, 1872, the said premises were sold thereunder by the said sheriff to the plaintiff, (p. 5, fol. 13; p. 17, fol. 46; p. 26, fol. 71; p. 30, fol. 82; p. 32, fol. 89.)

In the building thus erected, (p. 13, fol. 37,) and in other buildings on other lands not in controversy in this suit, said Sicher proceeded to carry on the business of distilling liquors.

On January 24, 1873, the premises, it is alleged in the information, were seized for alleged violations by said Sicher of the Internal Revenue laws of the United States. (p. 36, fol. 100.) On February 4, 1873, an information was filed against the lands in controversy, *inter alia*, by the United States District Attorney in the United States District Court, for the District of New Jersey. (p. 43, fol. 121.) Decree of condemnation was entered by default, February 25, 1873. (p. 46, fol. 130.) And the premises were sold under the decree by the marshal, May 22, 1873. (p. 49, fol. 141.)

At the trial of this cause in the Court below the plaintiff, in support of his title, offered in evidence the deed of the premises from Edward G. Brown and wife to Charles L. Sicher, dated August 20, 1872, and recorded on the same date; exemplified copies of the mechanics' liens and judgment rolls of the Union County Circuit Court in the cases of August Heidritter against Charles L. Sicher, builder and owner, and Ferdinand Blancke and others against Charles L. Sicher, builder and owner, respectively, the writs of *fieri facias* thereunder to the sheriff; and a deed for the premises from Seth B. Ryder, the sheriff, to August Heidritter, dated September 24, 1873. There were no objections to the admission of the plaintiff's testimony. And the plaintiff thereupon rested his case. (p. 9, fol. 23, and pp. 15 to 35).

In bar of the plaintiff's title the defendant offered in evidence the deed from Brown and wife to Sicher aforesaid (p. 10, fol. 27); and the record in full of the decree and proceedings in the case of the *United States* against *Eighty-nine Hogsheads of Molasses* and other property, real and personal, including the lands in question, and a deed in pursuance thereof from the United States Marshal to Edward G. Brown, dated May 29, 1873, and recorded June 7, 1873 (p. 10, fol. 28, and pp. 36 to 52); also sundry records and mesne conveyances, by which the title to said premises passed from said Edward G. Brown, and finally became vested in the defendant, (p. 12, fol. 33.)

To the admission of the records and decree in the condemnation proceedings and the deed from the marshal to Brown, the plaintiff objected, but the Court nevertheless admitted the testimony, (p. 11, fol. 29.) The plaintiff's exceptions to the admission of this testimony raise in part the questions presented in the case.

Under the New Jersey mechanics' lien law, (sections 11 and 66, *infra*,) and the decisions of the Courts of New Jersey, (*Jacobus* vs. *Mutual Benefit Life Insurance Co.*, 12 C. E. Gr. [N. J. Eq.] 604,) the title acquired by a purchaser under a lien proceeding relates back to the time of the commencement of the building. In the case at bar that was June 25, 1872.

At the trial in the Court below, it was objected, and the Court below held that the judgments in the lien proceedings, upon which the plaintiff's title was based, were not binding upon the defendant who claimed under condemnation proceedings taken by the United States authorities, for the reason that the United States was the owner of the premises liened against at the time of the filing of the lien claim, February 21, and March 13, 1873, and should, under the provisions of the lien law, have been made a defendant in the suit as owner.

The questions presented in the case are, first, were the lien proceedings under the law sufficient to pass title to the plaintiff, notwithstanding the United States was not a party as owner; and second, if so, were the mechanics' liens, under which the plaintiff claims title, divested by the decree of condemnation and sale in the forfeiture proceedings?

II.

ASSIGNMENT OF ERRORS.

1. That at the trial of the issue joined in this case before the Circuit Court of the United States for the District of New Jersey, the said Court erred in admitting the testimony of John C. Baily, which was inadmissible in the law, (*pro ut* the first bill of exceptions; record, p. 9, fol. 25.)

2. That at said trial the said Court erred in admitting the record of the decree of condemnation, the writ of execution issued thereunder and the deed of sale from Samuel Plummer, United States Marshal, to Edward G. Brown, dated May 29, 1873, conveying the premises in question, which evidence was inadmissible in the law, (*pro ut* the second bill of exceptions; record, p. 10, fol. 28.)

3. That at said trial the said Court erred in admitting the testimony of Edward G. Brown, which was inadmissible in the law, (*pro ut* the third bill of exceptions; record, p. 12, fol. 33.)

4. That at said trial the said Court erred in admitting the testimony of James Ray, which was inadmissible in the law, (*pro ut* the fourth bill of exceptions; record, p. 13, fol. 34.)

5. That at said trial the said Court erred in admitting the testimony of Frederick L. Heidritter, which

was inadmissible in the law, (*pro ut* the fifth bill of exceptions; record, p. 13, fol. 36.)

6. That the facts specially found were insufficient to support the judgment in favor of the defendant.

7. That upon the facts specially found judgment should have been given for the plaintiff in error.

8. That by the record aforesaid it appears that the judgment aforesaid given was given for the defendant against the said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff in error against the said defendant.

III.

POINTS FOR PLAINTIFF IN ERROR.

THE FIRST POINT.

Provision of the New Jersey Mechanics' Lien Law, and the nature of the plaintiff's title thereunder.

The plaintiff's title is derived from a sale by the sheriff of Union county upon executions issued upon two judgments recovered in two certain mechanics' lien proceedings, brought against Charles L. Sicher, builder and owner, in the Union County Circuit Court of New Jersey.

The liens claimed and the proceedings taken to enforce the same, were in pursuance of an act of the legislature of New Jersey, entitled "An act to secure to mechanics and others payment for their labor and materials in erecting any building," approved March 11, 1853, and the several supplements thereto and amendments thereof.

See *Nixon's Digest*, (4th Ed.) p. 571.

See also, *Revision of New Jersey*, p. 668, (approved March 27, 1874.) where the act is found practically as it existed when the lien claims in controversy were filed.

So much of said act as is necessary to a decision of this case, is in words as follows:

"1. Every building hereafter erected or built within this State, shall be liable for the payment of any debt, contracted and owing to any person for labor performed or materials furnished, for the erection and construction thereof, which debt shall be a lien on such building and on the land whereon it stands, including the lot or curtilage whereon the same is erected."

"6. Every person intending to claim a lien upon any building or lands by virtue of this act, shall within one year after the labor is performed, or the materials furnished for which such lien is claimed, file his claim in the office of the clerk of the county where such building is situate, which claim shall contain these matters:

"I. A description of the building and of the lot or curtilage upon which the lien is claimed, and of its situation sufficient to identify the same.

"II. *The name of the owner or owners of the land and the estate therein, on which the lien is claimed.*

"III. The name of the person who contracted the debt, or for whom, or at whose request the labor was performed, or the materials furnished for which such lien is claimed, who shall be deemed the builder.

"IV. A bill of particulars exhibiting the amount and kind of labor performed and of materials furnished, and the prices at which and time when the same was performed and furnished * * * verified by the oath of the claimant or his agent in said matter, * * * and when such claim shall not be filed in the manner or within the time aforesaid, or if the bill of particulars shall contain any wilful or fraudulent misstatement of the matters above directed to be inserted therein, the building or lands shall be free from all lien for the matters in such claim."

(This is section 11, of the *Revision.*)

"8. When the claim is filed agreeably to the provisions of this act upon any lien created thereby, the same may be enforced by suit in the Circuit Court of the county where such building is situated, which suit shall be commenced by summons against the builder and owner of the land and building, in the following or like form:

"Summon A. B., builder and C. D. owner, (or if the owner contracted the debt) A. B. builder and owner, to appear before the Circuit Court in and for the county of , at , in the said county, on the day of . That the said A. B., (the builder) may answer unto E. F., (claimant) of a plea, (as in other cases of assumpsit, debt, or whatever the proper form of action for the debt may be,) for which the said E. F. claims a building lien on a certain building and lands of said C. D., (describing the building and lands as in the claim on file.)

"And said summons shall be directed, tested and made returnable, and may be served and returned in the same manner as other writs of summons; and such summons may be served upon the defendants, or either of them, in any county of this State, by the sheriff thereof, and for this purpose the same, or a duplicate thereof, may be issued to such sheriff; and if any defendant cannot be found in this State, it may be served upon him by affixing a copy thereof upon such building, and also by serving a copy on such defendant personally, or by leaving it at his residence ten days before its return, which shall be deemed actual service, or in case such defendant resides out of this State, by affixing a copy on such building, and sending a copy by mail, directed to him at the post office nearest his residence, or in case his residence is not known to the plaintiff, then by affixing a copy to such building, and by inserting it for four weeks, once in each week, in some newspaper of this State, published or circulating in the county where such building is situate, either of which shall be legal service; and when an affidavit shall be made and filed of the facts, authorizing and constituting any such service, not made by a sheriff or officer, the suit may proceed against the party so served as if such summons had been returned served by the sheriff"

"9. That the declaration in such case shall, after reciting that both owner and builder were summoned, and how served, be against the builder, and in the same form as in other cases of assumpsit, covenant, debt, or as the case may be, and shall conclude with an averment that said debt is, by virtue of the provisions of this act, a lien upon such building and lot, describing the same as in said claim; and to said declaration a schedule may be annexed, and the practice, proceedings, and pleadings thereon shall be conducted, and the judgment entered, as in suits in said Circuit Court to recover money due on contract; and both or either of said defendants may, jointly or severally, have any defence or plea to the same that might be had by the builder to any action on said contract without this act; and in addition thereto, the owner may plead that said house or land are not liable to said debt, and in such case it shall be necessary for the plaintiff, to entitle him to judgment against the house and lands, to prove that the provisions of this act, requisite to constitute such lien, have been complied with; and in case a verdict be rendered or judgment be given against the builder only, judgment shall be given for the land owner, with costs against the plaintiff; and in case judgment be given for the plaintiff, it shall be entered against the builder when he was actually served with the summons, generally; and with costs as in other cases; and when only legal service of the summons has been made, judgment against the owner and also against the builder, shall be specially for the debts and costs, to be made of the building and lands in the declaration described; and in case no general judgment is given against the builder, such proceedings or recovery shall be no bar to any suit for the debt, except for the part thereof actually made under such recovery." (See *Revision*, Sec. 19.)

"10. Where judgment is entered generally against the builder, a writ or writs of *fieri facias* may issue thereon as in other cases; and when judgment shall be against the building and lands, a special writ of *fieri facias* may issue to make the amount recovered by sale of the building and lands; and when both a general and special judgment shall be given, both writs may be issued either separately or combined in one writ, and one may be issued after the return of the other for the whole or residue, as the case may require; and such judgments may be docketed in the Supreme Court, and execution had thereon as other judgments may be."

"11. Under such special *fieri facias*, the sheriff or other officer shall advertise, sell, and convey said building and lot in the same manner as directed by law in case of lands levied upon for debt, and the deed given by such sheriff or other officer shall convey to the purchaser said building free from any former encumbrances on the lands, and *shall convey the estate in said lands which the said owner had at any time after the commencement of the building*, within one year before the filing of such claim in the clerk's office, subject to all prior encumbrances created by deed or mortgage, made by such owner or any claiming under him, and not recorded or registered in the office of the clerk of the county at the commencement of said building."

(*Revision*, Sec. 23, is an amendment.)

"14. All lien claims for erecting the same building shall be concurrent liens upon the same and the land whereon the same is erected, and shall be paid *pro rata* out of the proceeds thereof, when sold by virtue of this act."

(*Revision*, Sec. 24.)

"A supplement approved March 11, 1863.

"66. Sec. 1. The sale under a special *fieri facias*, authorized by the eleventh section of the act to which this is a supplement, *shall convey the estate of the owner in the lands and in the buildings, subject to all mortgages and other encumbrances created and recorded or registered prior to the commencement of the building.*"

(*Revision*, Sec. 23.)

The title acquired by a purchaser under an execution issued upon a judgment recovered under a mechanics' lien, general as against the owner, and special as against the lands, is the estate which the owner had at the time of the commencement of the building, or which he subsequently acquired. And such title is paramount to all encumbrances put upon the property after the commencement of the building.

> *Sections* 11 *and* 66, *supra.*
> *Tompkins* vs. *Horton*, 10 C. E. Gr.(25 N. J. Eq.) 284.
> *In re James R. Day, a B'k't*, 9 Blatch. 285.

The excavation for the foundation is the commencement of the building.

> *Mutual Benefit Life Ins. Co.* vs. *Rowand*, 11 C. E. Green, (26 N. J. Eq.) 387,
> Affirmed: *Jacobus* vs. *Mutual Benefit Life Ins. Co.*, 12 C. E. Green, (27 N. J. Eq.) 604.

The building upon the premises in controversy was commenced June 25, 1872.

> (*Record*, p. 5, fol. 12.)

Sicher received his deed for the premises August 20, 1872, (p. 5, fol. 11.)

Sicher's title at the time he acquired the property was the fee subject to no incumbrances, and this title the plaintiff acquired on the sheriff's sale.

The Second Point.

Under the mechanics' lien laws Charles L Sicher, and not the United States, was the owner, and he was the proper person to be made party defendant as owner.

The owner at the time of the filing of the lien claim is the proper person to be made defendant. And he must be the owner of the legal estate: mortgagees and encumbrancers are not proper parties.

See 6 Sub-div. II., and *supra.*

Edward vs. *Derrickson*, 4 Dutch. (28 N. J. L.) 39. Affirmed: 5 Dutch. (29 N. J. L.) 68.

Tompkins vs. *Horton*, 10 C. E. Gr. (25 N. J. Eq.) 284.

By a late act provision is now made for making mortgagees parties, (Pub. Laws 1884, p. 260.)

And if after the filing of the claim the property is conveyed to a third person, still the owner named in the claim must be made the defendant.

Edwards vs. *Derrickson*, *supra.*

At the time of the filing the Heidritter lien claim in question, February 21, 1873, proceedings of condemnation had been commenced, (February 4, 1873,) but there had been no hearing or adjudication touching the matters contained in the information.

And it is plain that by "owner" the act means that person who appears to be such on the record.

The lien exists, and it is to enforce it that suit is brought. The defendant might have been, if the law had so required it, the owner at the time the debt was contracted, and the effect would still have been to divest subsequent encumbrances or conveyances.

But the legislature perceived that if the owner at the time the debt was contracted were made the defendant, and a sale took place under a lien proceeding, where there had been a conveyance of the property between the time of the commencement of the building and the filing of the lien claim, the title would not appear "straight" on the record. It, therefore, required that the owner at the time the lien was filed should be made defendant.

The Court below held that at the time when the lien claims were filed the United States was the *owner* of the premises liened against, and under the New Jersey mechanics' lien law was the proper party defendant, and not Charles L. Sicher, the actual defendant; and that, therefore, the United States was not bound by the judgment in the lien cases.

This conclusion is based upon the proposition that on the commission of the wrongful acts for which the property was condemned, the United States became such an "owner" as would fulfill the requirements of the New Jersey mechanics' lien law, concerning the person to be made party defendant.

If this proposition is true, then it follows that the lien claimants were deprived of their remedy. For under its sovereign powers as a nation, the United States could not have been sued by the claimants.

Briggs vs. *Light-Boat, &c.*, 11 Allen, 157.
The Siren, 7 Wall. 152.

(*a*.)

The United States did not become the owner within the meaning of the act, at least until after adjudication upon the information, and adjudication did not take place until February 25, 1873, after the filing of the Heidritter lien.

The doctrine relied on to overthrow the plaintiff's title is thus stated in the case of *Henderson's Distilled Spirits*, 14 Wall. 56: "Where the forfeiture is made absolute by statute, the decree of condemnation when entered relates back to the time of the commission of the wrongful acts, and takes date from the wrongful acts, and not from the date of the sentence or decree."

This is the doctrine of retroaction or relation. When the offence is committed the government acquires a right in and to the property, but till that right is consummated by a decree the government is not the owner within the meaning of the lien law. It cannot sell the land; and until seizure and office found the owner retains the property forfeited. Where lands are forfeited at common law in England for some offence, the Crown does not have the legal possession and title vested so as to be able to dispose of it at will, until the judicial declaration of the forfeiture. The owner is entitled to the rents and profits before the condemnation, because he is in possession, and the rights of the government, though existing, have not been ascertained.

Waples, Proceedings in Rem, § 114.

In *Caldwell* vs. *U. S.*, 8 How. 366, 381, the Court in speaking of absolute forfeitures, says: "The title of the United States to the goods forfeited, is not consummated until after judicial condemnation; but the right to them relates backward to the time the offence was committed, so as to avoid all intermediate sales of them between the commission of the offence and condemnation."

U. S. vs. *64 Bbls.*, 3 Cliff. 308, CLIFFORD, *J.*, says: "Where the act of Congress declares in terms, without any qualification or election of remedies, that forfeiture shall take place on the commission of the offence, it becomes the duty of the Court to carry the provisions into effect, even as against innocent purchasers, *in cases where the title is consummated by seizure, suit and judgment or decree of condemnation.*"

The title of the United States was not complete until a judicial condemnation, but it then reverts to the commission of the offence.

Burroughs on Taxation, 579.
Cooley on Taxation, 318.
Bennett vs. *Hunter*, 9 Wall. 326.

The object of this doctrine of relation or retroaction was to remove from the offending person, the power to defeat the forfeiture by any subsequent transfer of the property.

Henderson's Distilled Spirits, supra.

A decree of foreclosure of a mortgage, or a judgment on a lien claim, retroacts in a similar manner.

Waples, Proceedings in Rem, § 120.

If the United States had been made with its consent, the defendant, and it afterwards transpired that Sicher had not been guilty of the unlawful acts charged, the claimants would have lost their liens by having made an improper person the defendant.

Edwards vs. *Derrickson*, *supra.*

The Third Point.

Nature of defendant's title under the condemnation proceedings.

The lands in controversy are claimed to have been condemned under forfeiture proceedings taken under the Internal Revenue laws of the United States relating to illicit distilling, and other offences against the revenue.

Whatever right the United States had to forfeit property for violations of the Internal Revenue, was wholly derived from the laws of Congress.

We claim that under those laws the land in its entirety—each and every interest therein—is not forfeited, but that all that can be seized and condemned, where land is the subject of forfeiture, is:

1. The right, title and interest of the offending person at the time of the commission of the act, and subject to all prior encumbrances; and

2. The right, title and interest of every person who having the right or power to control the use of the property has suffered or permitted the land to be used for a distillery.

Any decree effecting other interests than these would be to that extent without jurisdiction and void.

The several acts relating to forfeitures of land are embodied in the Revised Statutes in practically the same phraseology in which they existed when the Sicher proceedings were instituted, and for the present discussion they may be considered as they there appear.

The sections of the Revised Statutes which relate to forfeitures of real estate are 3257 (Sec. 5, act of March 31, 1868), 3260 (Sec. 7, act July 20, 1868), 3281 (Sec. 44, act of July 20, 1868), 3305 (Sec. 19, act of July 20, 1868), and 3310 (Sec. 22, act of July 20, 1868.)

These sections are as follows, viz.:

"Sec. 3257. Whenever any person engaged in carrying on the business of a distiller defrauds or attempts to defraud the United States of the tax on the spirits distilled by him, or any part thereof, he shall forfeit the distillery and distilling apparatus used by him, and all distilled spirits and all raw materials for the production of distilled spirits found in the distillery and on the distillery premises, and shall, on conviction, be fined not less than five hundred dollars, nor more than five thousand dollars, and be imprisoned not less than six months, nor more than three years."

This is Sec. 5, act of March 31, 1868. (15 St. at L. p. 59.)

The information does not count upon this section.

"Sec. 3260. Every person intending to commence or to continue the business of a distiller shall, on filing with the collector his notice of such intention, and before proceeding with such business, and on the first day of May of each succeeding year, execute a bond in the form prescribed by the Commissioner of Internal Revenue, conditioned that he shall faithfully comply with all the provisions of law relating to the duties and business of distillers, and shall pay all penalties incurred or fines imposed on him for a violation of any of the said provisions; and that *he shall not suffer the lot or tract of land on which the distillery stands, or any part thereof*, or any of the distilling apparatus, *to be encumbered by mortgage, judgment or other lien during the time in which he shall carry on said business.* * * * Every person who fails or refuses to give the bond hereinbefore required, or to renew the same, or who gives any false, forged or fraudulent bond, *shall forfeit the distillery*, distilling apparatus *and all real estate and premises connected therewith*, and shall be fined not less than five hundred dollars, nor more than five thousand dollars, and imprisoned not less than six months, nor more than two years."

This is Sec. 7, act of July 20, 1868, (15 St. at L. 127,) as amended by act of June 6, 1872, sec. 12, (17 St. at L. 239.)

The information counts upon this section. (Record, p. 39, fol. 110.)

Section 3262 is as follows, viz.: "No bond of a distiller shall be approved *unless he is the owner in fee, unincumbered by any mortgage, judgment or other lien, of the lot or tract of land on which the distillery is situated, or unless he files with the collector, in connection with his notice, the written consent of the owner of the fee, or of any mortgage, judgment-creditor or other person having a lien thereon, duly acknowledged, that the premises may be used for the purpose of distilling spirits, subject to the provisions of law, and expressly stipulating that the lien of the United States for taxes and penalties shall have priority of such mortgage, judgment or other incumbrance, and in case of the forfeiture of the distillery premises or of any part thereof, the title of the same shall vest in the United States, discharged from such mortgage, judgment or other incumbrance.* In any case where the owner of a distillery or distilling apparatus, erected prior to the twentieth day of July, eighteen hundred and sixty-eight, has only an estate for a term of years, or other estate less than fee simple in the lot or tract of land on which the distillery is situated, the evidence of title to which shall have been duly recorded prior to that date; or in like case, where the lease or other evidence of title is held, but was not required by the laws of the State to be recorded in order to be valid at the time of its execution; or in any case of such prior erection, where such owner is possessed of the fee, but incumbered with a mortgage executed and duly recorded prior to said twentieth of July, eighteen hundred and sixty-eight, and not due, or in any case of such prior erection where the fee is held by a *feme covert*, minor or person of unsound mind, or other person incapable of giving consent, as hereinbefore required, the value of such lot or tract of land, together with the building and distilling apparatus, shall be appraised in the manner to be prescribed by the Commissioner of Internal Revenue; and the collector may, at the discretion of the commissioner, be authorized to accept, in lieu of the said written consent of the owner of the fee, the bond of such distiller. * * * conditioned that in case the distillery, distilling apparatus or any part thereof shall, by final judgment, be forfeited for the violation of any of the provisions of law, the obligors shall pay the amount stated in said bond."

This is Sec. 8, act of July 20, 1868, (15 St. at L. 128,) as amended by act of April 10, 1869, (16 St. at L. 41.)

"Sec. 3281. Every person who carries on the business of a distiller without having given bond as required by law, or who engages in or carries on the business of a distiller, with intent to defraud the United States of the tax on the spirits distilled by him, or any part thereof, shall, for every such offence, be fined not less than one thousand dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years. And all distilled spirits or wines, and all stills or other apparatus, fit or intended to be used for the distillation or rectification of spirits or for the compounding of liquors, owned by such person, wherever found, and all distilled spirits or wines and personal property found in the distillery or rectifying establishment, or in the store or other place of business of the compounder, or in any building, room, yard, or enclosure connected therewith, and used with or constituting a part of the premises; and *all the right, title, and interest of such person in the lot or tract of land on which such distillery is situated*, and *all right, title, and interest therein of every person who knowingly has suffered or permitted the business of a distiller to be there carried on, or has connived at the same*; and all personal property owned by or in possession of any person who has permitted or suffered any building, yard, or enclosure, or any part thereof, to be used for purposes of ingress or egress to or from such distillery which shall be found in any such building, yard, or enclosure, and *all the right, title, and interest of every person in any premises used for ingress or egress to or from such distillery, who has knowingly suffered or permitted such premises to be used for such ingress or egress, shall be forfeited to the United States.*"

This is Sec. 44, act of July 20, 1868, (152 St. at L. 142,) amended.

The original act provided as follows: "That any person who shall carry on the business of a distiller, rectifier, compounder of liquors, wholesale liquor dealer, retail dealer, or manufacturer of stills, without having paid the special tax as required by law," and then continued in the words of the present act.

When the Sicher proceedings were instituted the original section was in force, except as amended by act of June 6, 1872, S. 12, (17 St. at L. 239,) which struck out "the word 'distiller' where it first occurs therein."

The information counts upon this section. (Record, p. 41, fol. 115.)

"Sec. 3305. Whenever any false entry is made in, or any entry required to be made is omitted from either of the said books mentioned in the two preceding sections, with intent to defraud or to conceal from the revenue officers any fact or particular required to be stated and entered in either of said books, or to mislead in reference thereto, or any distiller as aforesaid omits or refuses to provide either of said books, or cancels, obliterates, or destroys any part of either of such books, or any entry therein, with intent to defraud, or permits the same to be done, or such books, or either of them, are not produced when required by any revenue officer, the distillery, distilling apparatus, and the lot or tract of land on which it stands, and all personal property of every kind and description on said premises used in the business there carried on, shall be forfeited to the United States. And every person who makes such false entry, or omits to make any entry hereinbefore required to be made, with the intent aforesaid, or who causes or procures the same to be done, or fraudulently cancels, obliterates or destroys any part of said books, or any entry therein, or who wilfully fails to produce such books or either of them, shall be fined not less than five hundred dollars nor more than five thousand dollars, and imprisoned not less than six months nor more than two years."

This is the latter part of Section 19, act of July 20, 1868, (15 St. at L. 132,) as amended by act of June 6, 1872, (17 St. at L. 240.)

The information counts upon this section. (Record, p. 39, fols. 111 to 114.)

"Sec. 3310. Every distiller, at the hour of twelve meridian, on the third day after that on which his bond is approved, shall be deemed to have commenced, and thereafter to be continuously engaged in the production of distilled spirits in his distillery, except in the intervals when he shall suspend work as hereinafter provided. Any distiller desiring to suspend work in his distillery may give notice in writing to the collector of the district, stating when he will suspend work; and on the day mentioned in said notice, said collector or one of his duputies shall, at the expense of the distiller, proceed to fasten securely the door of every furnace of every still or boiler in said distillery, by locks and otherwise, and shall adopt such other means as the Commissioner of Internal Revenue may prescribe, to prevent the lighting of any fire in such furnace, or under such stills or burners. * * * No distiller, after having given such notice, shall, after the time stated therein, carry on the business of distiller on said premises until he gives another notice in writing to said collector, stating the time when he will resume work; and at the time so stated for resuming work the collector, or one of his deputies, shall attend at the distillery to remove said locks and other fastenings; and thereupon, and not before, work may be resumed in said distillery, which fact shall be immediately reported to the collector of the district, and by him transmitted to the Commissioner of Internal Revenue. Every distiller who, after the time fixed in said notice declaring his intention to suspend work, carries on the business of a distiller on said premises, or has mash, wort, or beer in his distillery, or on any premises connected therewith, or has in his possession or under his control any mash, wort, or beer, with the intent to distill the same on said premises, shall incur the forfeitures and be subject to the same punishment as provided for persons who carry on the business of a distiller without having given the bonds required by law."

Section 22, act of July 20, 1868, (15 St. at L. 134,) as amended by act of June 6, 1872, (S. 12, 17 St. at L. 240.)

The information counts upon this section. (Record, p. 40, fol. 114.)

The information in the condemnation proceedings claims a forfeiture of the property seized for offences alleged therein to have been committed under various sections of the act, but as to the real estate only under section 3260, which is the seventh section of the act of July 20, 1868, (*Record*, p. 39, fol. 110,) 3303 to 3305, which is the nineteenth section of the said act, (p. 39, fols. 111 to 114), 3310, which is the twenty-second section of said act, (p. 40, fol. 114), and 3281, which is the forty-fourth section of said act, (p. 4, fols. 114 to 118.)

THE FOURTH POINT.

The Internal Revenue Laws, where land is made the subject of forfeiture, forfeit only (1), all the right, title and interest therein of the offending person; and (2), all the right, title and interest therein of every person who, having the right or power to control the use of the property, has knowingly suffered or permitted the land to be used for a distillery.

Congress clearly indicates in the laws under consideration a purpose to exclude from the operation of the forfeitures imposed, lands, or interests therein, of persons who have not knowingly suffered or permitted their property to be in such a position that the offences defined in the act can be committed in respect to it.

Until the acts of March 31, 1868, and July 20, 1868, Congress had not provided for a forfeiture of lands for offences against the revenue. It then, for the first time, included that species of property within the operation of the forfeitures imposed. But it clearly perceived that, even if it were constitutional, it would be much harsher in its operation upon the rights of innocent parties to apply to lands in the same measure the severe penalties it imposed upon personal property.

It distinguishes, therefore, in this respect between real estate and personal property. The latter, it forfeits absolutely, without regard to ownership; but it qualifies the forfeitures it imposes on the former.

U. S. vs. *Distillery at Spring Valley*, 11 Blatch. 255.
U. S. vs. *One Copper Still*, 8 Biss. 270.

Owners of personal property may, in general, be presumed to know where it is, to know for what purpose the place is used, and to be competent to protect it.

With real estate the conditions are different. Interests in land are various, present, future, vested and contingent. The title may be in one, the present lawful possession and control in another. One may own the surface and another may have a right to the minerals beneath.

"In view of the lien contemplated and of the for-"feitures and penalties pronounced in the act, Congress "did not fail to see that there might be cases in which "prior valid liens might exist upon the property in "favor of persons who could not control its use or whose "interest ought not to be affected by the sole act of "another; nor also to see that there might be many "cases in which the legal possession might be in "holders for a term of years, or having other temporary "control when the owners of the reversion, remainder "and other future or contingent estate had no lawful "right to interfere with the present use of the property. "Nor that their might be cases in which the title or some "interest was held by *feme coverts*, minors or other per-"sons under a disability. * * *

"It was therefore determined not to permit the busi-"ness of a distiller to be carried on unless, nor until all "impediments to the creation and enforcement of the "contemplated liens, as well for penalties as for taxes, "and all impediments to the enforcement of forfeitures "were removed; and that was important to prevent any "suggestion that the law violates the constitution or its "fundamental principles, and also to render any allega "tion that property had been forfeited belonging to one "who had not consented voluntarily to place it within "the operation of, and to make it expressly subject to "the law."

U. S. vs. *Distillery at Spring Valley, supra.*

That the statute excludes certain lands or interests therein from the operation of its forfeitures, is demonstrated by the peculiar and significant phraseology employed in sections 3260 and 3262 and 3281 and 3310.

The bond first mentioned in section 3262, is the bond provided for in section 3260, one of the conditions of which is that "*he*," (the distiller,) "*shall not suffer the lot or tract of land on which the distillery stands, or any part thereof,* * * * *to be encumbered by mortgage, judgment or other lien during the time in which he shall carry on said business.*"

Congress most clearly, in sections 3260 and 3262, expresses by implication its intention to protect from the forfeitures imposed by the act the lands or interests therein of innocent third parties. And a natural inference to be drawn from them is, that unless Congress in declaring the forfeitures imposed in the act especially and expressly subjects to their operation the lands or the interests therein of persons other than the distiller, it intends that only the interest of the offender in the land shall be forfeited, even where general words are used.

If Congress intended that the offences guarded against in these laws should, when committed, work a forfeiture of the entire land—each and every interest in it—then the clause of 3260, above quoted, and section 3262 are meaningless.

Section 3281 clearly indicates in unambiguous terms what interest in land Congress intended to subject to forfeiture. That section declares that "all the right title and interest" of the distiller, and "all the right, title and interest of every person who has knowingly suffered or permitted the business of a distiller to be carried on" on the land, or who has "connived at the same," shall be forfeited.

The cause, or offence, defined in this section which subjects the land of any other person than the distiller to forfeiture is, in accord and agreement with the intention of Congress expressed in section 3262, not to forfeit that land unless its owner has knowingly placed it within the distiller's power or control.

Section 3281 is evidently more important and comprehensive than any of the other sections, which impose forfeitures, to be found in the act. It provides against the offences which are the most serious in their attack upon this branch of the Internal Revenue system. It is drawn with the greatest care, with the evident intent to subject to the operation of its forfeitures every piece of property and every interest therein which it was the scheme of Congress to forfeit.

As it existed originally in the act of July 20, 1868, section 44, (Sec. 15, U. S. Stat., 142), the offences named were:

1. The carrying on of the business of a distiller, rectifier, compounder of liquors, wholesale liquor dealer or manufacturer of stills without having paid the special tax required by law.

2. The carrying on of the business of a distiller without having given the bond required by law.

3. The engaging in or carrying on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him, or any part thereof.

4. Knowingly suffering or permitting the business to be carried on or conniving at the same, on the part of other persons than the distiller.

5. Suffering or permitting ingress or egress to or from such distillery through other property.

In the care with which it enumerates each subject of of forfeiture, this section is in marked contrast to the others.

That Congress, in this most comprehensive and important section, forfeits the interests in the land of only two classes of persons, the distillers and those who have knowingly allowed their property to be used in the business; that it makes a distinction between the several interests in land, and by implication excludes from forfeiture the interests of innocent persons in the offending land, thus following out the intention expressed by Congress in section 3262, leads to the conclusion that Congress intended throughout the act to distinguish between the several interests in land, to make each, as it were, a separate *res*, and that it never intended that the interests of persons not in fault should be forfeited or made the subject of forfeiture. Another inference is that where, in another part of the act, as in section 3305, the forfeiture of land is condemned, without defining the particular interests therein, the interest of the distiller is intended. Speaking of section 3281, Judge WOODRUFF, in the *Spring Valley case* (*supra*), says: "Congress seems, in respect to real estate, to protect one "whose land, under lease or out of possession, may, "without his knowledge and consent, or perhaps even "against his will, where he has no power to prevent, be "used in and for the purposes of a distillery."

See also—

Gregory vs. *U. S.* 26 Int. Rev. Rec 27.

Section 3310 declares that the delinquent "shall incur the same forfeitures * * * as provided for persons who carry on the business of a distiller without having given the bonds required by law;" that is, the forfeitures imposed in section 3281. The same reasoning applies therefore to this section as has been used in speaking of section 3281.

And the construction contended for is not inconsistent with the intent of Congress as expressed in the other sections, viz., 3257, 3260 and 3305. And an examination of these sections will make it further appear that wherever Congress forfeits land in general words, without defining particular interests therein, it has in view only the interest of the distiller at the time of the commission of the offence and subject to all prior encumbrances.

The language employed in declaring these forfeitures is not uniform in the different sections.

Section 3257 declares that the delinquent "shall forfeit the distillery." Section 3260 that the delinquent "shall forfeit the distillery, and all real estate and premises connected therewith." Section 3281 that "all the right, title and interest" of the distiller, and "all the right, title and interest of every person who has knowingly suffered or permitted the business of a distiller to be there carried on, or has connived at the same, shall be forfeited to the United States." Section 3305 that "the distillery * * * and the lot or tract of land * * * shall be forfeited to the United States." Section 3310 declares that the delinquent "*shall incur* the forfeitures * * * as provided for persons who carry on the business of a distiller without having given the bonds required by law."

The sections, therefore, which employ general words in declaring the forfeit, are 3257, 3260 and 3305.

The offence in section 3257 is defined as follows: "Whenever any person engaged in carrying on the business of a distiller defrauds or attempts to defraud the United States of the tax on the spirits distilled by him or any part thereof." Is not this offence practically comprehended within the second offence defined in section 3281, which is as follows: "Every person * * who engages in or carries on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him or any part thereof?"

One of the offences provided for in section 3260, is the failure or refusal on the part of the distiller to give the bond before proceeding with his business. Is this offence not also comprehended within the offence provided for in section 3281, and there described as the carrying "on the business of a distiller without having given the bonds as required by law?"

It does not seem probable that Congress intended to make the penalties for the offences defined in sections 3257 and 3260 more severe than those imposed for the offences described in section 3281.

In construing these sections, 3257 and 3260, (and 3310, as we have seen,) we must refer, therefore, to section 3281, to ascertain what the exact subject of forfeiture is.

Furthermore, the language employed in section 3260, in setting forth the condition of the bond therein required, indicates an intention on the part of Congress not to subject to forfeiture the rights of persons who have acquired liens on the land prior to the United States. General words in declaring the forfeiture, nevertheless, are used, and if we did not consider the context, those words are sufficient to include the entire land.

Section 3305 is the only section to which it is possible to give a different construction. That section declares that "the distillery * * and the lot or tracts of land on which it stands * * * shall be forfeited to the United States."

That section relates to the keeping of the two books required by section 3303.

As the section stands in the act of July 20, 1868, it includes sections 3303, 3304 and 3305 of the Revised Statutes. It commences as follows, viz:

"Sec. 19. *And be it further enacted*, That every person making or distilling spirits, or owning any still, boiler, or other vessel used for the purpose of distilling spirits, or having such still, boiler, or other vessel so used under his superintendence, either as agent or owner, or using any such still, boiler or other vessel, shall, from day to day, make, or cause to be made, true and exact entry in a book or books, to be kept by him, in such form as the Commissioner of Internal Revenue may prescribe, of the kind of materials, and the quantity in pounds, bushels, or gallons purchased by him for the production of spirits, from whom and when purchased, &c."

The phraseology of this sentence would lead to the inference that when, afterwards, the forfeiture of the distillery and lot was declared the property or interest therein of the "person making or distilling spirits, or owning any still," only was intended to be the subject of forfeiture.

The offences provided for are: the making of false entries or the omission to make any entry required to be made with intent to defraud or to conceal; the omission or refusal to provide said books; the cancellation, obliteration or destruction of said books or any entry therein, with intent to defraud; and the neglect to produce said books when required by any revenue officer.

The words here used declaring the forfeiture are broad, and without reference to the offences named, or the other sections of the act might, perhaps, be construed to create an absolute forfeiture of each and every interest in the land.

The section relates entirely to the keeping of books —an act over which no person save the distiller or his agents have control.

A forfeiture can only be applied to these cases in which the means that are prescribed for the prevention of a forfeiture may be employed, or when the person whose property would otherwise be forfeited can have means of preventing the acts which appear to have brought the property within the letter of the law.

Peisch vs. *Ware*, 4 Cranch, 347.
U. S. vs *33 Bbls. of Spirits*, 1 Low. 239.

That the offences defined do not relate to so serious attacks upon the Internal Revenue system as those provided for in the other sections; and the matters required to be done are so clearly within the province of the distiller or his agent, and so entirely beyond the control of third parties, would lead to the inference that Congress certainly did not intend to declare a forfeiture vastly more severe in its operation upon the property of innocent third persons than the forfeitures imposed in the other sections, unless no other construction is possible.

Congress had before, in sections 3260 and 3262, by implication, expressed a clear intention not to subject to the operation of the forfeitures imposed by the act interests in land of innocent third parties. In using general words declaring a forfeiture of the land in section 3305, it did not mean to imply that the forfeiture there imposed was an exception to the rule; for it had used general words in declaring the forfeitures in sections 3257 and 3260.

In sections 3257 and 3260, as in section 3305, nothing is said touching the ownership of the subjects of forfeiture; no interests are defined, none are impliedly or expressly excluded; but, as in 3305, the forfeitures are declared in the broadest terms. Read, however, in connection with sections 3262 and 3281, and it appears that the real estate intended is the offending person's interest in the distillery and the lot or tract of land on which it stands. Where Congress intended to subject other interests in land, than the distiller's, to the forfeitures imposed by the act, it so expressly stated.

Where real estate is concerned, it is evident that Congress, in the Internal Revenue acts, is ever solicitous of the rights of innocent third parties. Even in so important a matter as the collection of taxes, it is careful of their interests.

See section 3199, which provides that the deed of real estate under proceedings to collect taxes, "shall operate as a conveyance of all the right, title and interest of the delinquent."

See also section 106 of the act of July 20, 1868, (15 St. at L. 167,) R. S., Sec. 3207.

If it be maintained that for the fault of the distiller the entire land—each and every interest therein—is forfeited to the United States, then the law is open to the objection of unconstitutionality.

Take for illustration such a case as is presented by the very proceedings in question—the case of the *United States* against *89 Hogsheads of Molasses, &c.*—and admit that by section 3305, and the other sections, where the forfeiture is declared in general terms the intention of Congress is to create an absolute forfeiture of the land,—then the only question in such case to be determined is, is the distiller guilty of the acts prohibited by the statute? If he is, the entire property, the distiller's interest and the interests of the lienors therein, is condemned. To such an issue the lienors can have no defence to interpose. Such a proceeding is practically as the Court declared in *Bigelow* vs. *Forrest*, 9 Wall. 339, "wholly *inter alias partes.*" If the lienor asserts his claim it will avail him nothing. The question is, the guilt of the offender: that found, the property is condemned. The lienor's property is practically taken away from him without a hearing, without trial and without any procedure in due course of law.

Bigelow vs. *Forrest, supra.*
Confiscation Cases, 20 Wall. 114.
The Mary, 9 Cranch, 126.
U. S. vs. *Distillery at Spring Valley*, 11 Blatch. 255.
People vs. *Soper*, 7 N. Y. 428.

In the case last cited the New York Court of Appeals says: "An adjudication of rights of a party without offering him opportunity of being heard in his defence is void. * * There is nothing which our law denounces more explicity than an adjudication of the rights of a party without offering him an opportunity of being heard in his defence."

The District Attorney in the forfeiture proceedings indicates by the libel of information, the warrant of arrest, the advertisement of sale and the deed of the marshal, that there are interests in land used for a distillery which are not subject to forfeiture. Certain of the lands seized were owned absolutely by the distiller. Certain leased portions are held under an agreement to convey. Note the language used of each.

(See transcript of record, pp. 36-7, 44, 47.)

The construction of all laws is to arrive at the legislative intent, and the intent may be found from the act itself, from other acts in *pari materia*, and sometimes from the cause or necessity of the statute. Wherever the intent can be discovered it should be followed with reason and discretion, though such construction seem contrary to the letter of the statute. A thing within the letter is not within the statute, unless within the intention.

Potter's Dwarris' Stat. and Const. p. 144.

"That a law," says Chief Justice MARSHALL, *Pennington* vs. *Coxe*, 2 Cranch, 52, "is the best exposition of itself; that every part of an act is to be brought into view for the purpose of discovering the mind of the legislature, *and that the details of one part may contain regulations restricting the extent of general expressions used in another part of the same act*, are among those plain rules laid down by common sense for the exposition of statutes, which have been uniformly acknowledged."

In the construction of revenue laws, where clauses inflicting pains or penalties are ambiguously or obscurely worded, the interpretation is ever in favor of the subject, "for this plain reason," said HEATH, *J.*, in *Hubbard* vs. *Johnson*, 3 Tann. 177, "that the legislature is ever at hand to explain its own meaning, or to express more clearly what has been obscurely expressed."

And it is a general principle as well as of natural justice, that statutes will not be understood to forfeit property, except for the fault of the owner or his agents, unless such a construction is unavoidable.

Potter's Dwarris' Stat. and Const. p. 251.

Peisch vs. *Ware*, 4 Cranch, 347.

U. S. vs. *33 Bbls.*, 1 Abb. U. S. 311.

S. C., 1 Lowell, 239.

Freeman vs. *403 Casks of Gunpowder*, Thacher's Criminal Cases, 14.

~~*Cumberland*~~ Clinkenbeard vs. *U S.*, 21 Wall. 65.

The Internal Revenue laws show a uniform policy not to extend forfeitures to property belonging to innocent third parties.

U. S. vs. *100 Bbls. of Spirits*, 2 Abb. C. C. R. 305.

U. S. vs. *372 Pipes, &c.*, 5 Sawy. 44.

Gadger vs. *Bates*, 52 Ga. 285; decided in the year 1874.

This last case, which was an action of ejectment, is directly in point. The facts were, that A leased lands to B, who, without A's knowledge, carried on a distillery upon the premises, B becoming liable under the revenue laws for the taxes and a penalty; proceedings to collect the same were had, and the premises were sold to the plaintiff who brought the action against the owner. And the Court held that such a sale conveyed the interest of the lessee only. The Court, in its opinion, says: "It is true that the act of Congress of 1867, "(*U. S. Stat.* Vol. 14, 480,) does provide that the tax due "from the distiller shall be a lien on the tract of land "on which the distillery is situated. But the provisions "of the same act in reference to the license and the "requirements that the owner of the land shall consent "to the lien, together with the provisions of the act of "1868 on the same subject, thereby indicate that it was not "the intent of Congress to declare this lien to exist in cases "where the still was upon the land of another without "his knowledge or consent. Such a provision would be "so contrary to the principles of justice that it should "require the very plainest language to establish it—lan-"guage that would meet the very case, and not as is the "case in this act, mere general words. We incline to "think that when the act says a lien on the land it only "means a lien on the interest of the distiller in the land "and the interest of the party signing the consent at "the time of the license. * * * * Even "in the case of illegal distilling the act of 1868 only "forfeits the land of one other than the distiller, in case "he knows of the illegal distillation on his land."

This case is cited in *Borrough on Taxation*, p. 670.

By comparing with each other the several sections above set forth, and giving to each a construction in harmony with the whole intent of Congress as expressed in the act, it is necessary to restrict the forfeitures declared in general words in sections 3257, 3260 and 3305, to the estate of the offending person only.

The construction of the act herein contended for is not without its authority. Mr. Justice HARLAN, in the case of *United States* vs. *Schulte*, in the Circuit of the United States for the Western District of Wisconsin, brought up on appeal to this Court and reported in the case of *United States* vs. *Emholt*, 105 U. S. 414, evidently gave to the act the construction herein insisted upon.

See also:

United States vs. *Mackoy*, 2 Dill. 299.

United States vs. *Distillery of Mackoy*, 21 Int. Rev. Rec. 165.

Bump, Internal Rev. Laws, 99.

Studied from the point of view from which we have been considering the Internal Revenue act, the case of *Dobbins' Distillery* vs. *U. S.*, 96 U. S., 395, is perfectly consistent with the theory presented.

On page 399 we find it said: "Nor is it necessary "that the owner of the property should have knowledge "that the lessee and distiller was committing fraud on "the public revenue, in order that the information of for"feiture should be maintained. *If he knowingly suffers "and permits his land to be used as a site for a distillery, "the law places him on the same footing as if he were the "distiller and the owner of the lot where the distillery is* "*located; and if fraud is shown in such a case the land is* "*forfeited, just as if the distiller were the owner.*"

And speaking of what is now section 3305 of the Revised Statutes, on page 401, it says: "Nothing can be "plainer in legal decision than the proposition that the "offence therein defined is attached primarily to the distillery and the real and personal property used in connection with the same, *without any regard whatsoever to the* "*personal misconduct or responsibility of the owner, beyond* "*what necessarily arises from the fact that he leased the* "*property to the distiller, and suffered it to be occupied and* "*used by the lessee as a distillery.*"

And in speaking of the claims of the owner on page 403: "Beyond controversy the title of the premises and "property was in the claimant; and it is equally certain "that he leased the same to the lessee for the purposes "of a distillery, and with the knowledge that the lessee "intended to use the premises to carry on that business, "and that he did use the same for that purpose. Fraud "is not imputed to the owner of the premises; * * "if the lessee and operator of the distillery committed "the alleged frauds, the government was entitled to a "verdict, even though the jury were of the opinion that the "claimant was ignorant of the fraudulent acts or omissions of the distiller.

"Viewed in that light, the legal conclusion must be "that the unlawful acts of the distiller bind the owner "of the property in respect to the management of the "same, as much as if they were committed by the owner "himself. Power to that effect the law vests in him by "virtue of his lease: and if he abuses his trust it is a "matter to be settled between him and his lessor: but "the acts of violation as to the penal consequences to "the property are to be considered just the same as if "they were the acts of the owner."

The reasoning is this: if the owner suffers his land to be used for a distillery, he places himself on the same footing as if he were the distiller; and this is so because the offence is committed by the property itself. And by leasing the property for a distillery the owner surrenders it to all the risks of the distilling business, including fraud on the part of the distiller.

But before the owner's land can be condemned it must be shown that he suffered the premises to be used as a distillery.

The Fifth Point.

Such interests in land as were vested in the holders of the mechanics' liens, under which the plaintiff claims title, could not by the statute have been subjected to forfeiture, and therefore, if the decree of condemnation relied upon by the defendant is entitled to an interpretation which condemns those interests, it is to that extent void.

If the view above propounded, viz., that only the interests in land of the distiller and of those persons who "knowingly suffer and permit" the business to be carried on are subjected to forfeiture, is correct, then the interests of the lienors under whom the plaintiff claims title could only have been condemned because those interests were owned by persons belonging to the category of those who knowingly suffered and permitted the business to be carried on, or connived at the same.

These words are not applicable to such interests in land as are represented by mechanics' liens.

How could these lienors "knowingly suffer and permit the business to be there carried on or connive at the same?" Those words imply that the persons whose interests are affected have such rights in the land as enable them to control its use, as owners, mortgagees in some cases, and the like.

But these lienors had no such rights; they could exercise no control over the use of the land. They supplied the materials which went into the erection of the building, in which the business of distilling was afterwards carried on. There was no distillery, and consequently no business, when they acquired their liens.

All these material men could have done was to take proceedings to enforce their liens, obtain judgment and sell the property. The building was completed about October 1, 1872. By taking immediate steps to enforce their liens these lienors could not have obtained a sale until long after the property had been forfeited.

A mechanics' lien is analogous to a mortgage not due, which the statute impliedly admits cannot be the subject of a forfeiture under the provisions of the act.

See Section 3262.

The interests of the lienors in the land siezed could not by law have been the subject of forfeiture, and, therefore, the Court had no such jurisdiction of those interests as enabled it to pronounce a decree which could have the effect of divesting those interests.

The right to forfeit property under the Internal Revenue laws is derived wholly from the statute. That species of property, or that interest in real estate which the statute declares forfeited, is alone the subject of condemnation. Other property may be seized, land may be condemned when there are existing interests therein which could not have been forfeited, but as the Court never had jurisdiction over that property or those interests in land, its action is so far void.

For instance, if more land were seized and condemned for a violation of the Internal Revenue laws than was reasonably necessary for the use of the distillery, the court being without jurisdiction of the surplus, its decree, so far as that surplus is concerned, would be void.

Waples on Proceedings in Rem, §§ 155, 181.
U. S. vs. A Certain Piece of Land, 1 Sawy. 84.

The *res*—the guilty thing—is that which the Court had jurisdiction to condemn. When land is the subject of forfeiture it is that interest in it which the government was empowered by law to forfeit.

Waples, Proc. in Rem, § 41.

This, we take it, is the reasoning and the conclusion of this Court in a class of cases where this point was the subject of controversy, and which are the only cases where this point seems to have been raised. We refer to the line of decisions in what are known as the "Confiscation Cases."

The confiscation act, passed July 17, 1862, during the late rebellion, "to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," provided among other things, as follows, viz.:

"Section 5. That to insure the speedy termination of the present rebellion, it shall be the duty of the President of the United States to cause the seizure of all the estate and property * * of all the persons hereinafter named, and to apply and use the same, and the proceeds thereof, for the support of the army of the United States," and it further named certain classes of people whose property should be liable to seizure.

"Section 7. That to secure the condemnation and sale of any such property, after the same shall have been seized, so that it shall be made available for the purposes aforesaid, proceedings *in rem* shall be instituted in the name of the United States, in any District Court thereof, or any territorial court within which the * * property above described may be found; * * * *which proceedings shall conform, as nearly as may be, to proceedings in admiralty or revenue cases;* the same shall be condemned as enemies' property, and become the property of the United States, and may be disposed of as the court shall decree. * * "

By a joint resolution (See 12 *Stat. at Large*, 627) explanatory of this act, it was resolved by Congress that no punishment or proceedings under the act should be "so construed as to work a forfeiture of the real estate of the offender beyond his natural life."

The forms of procedure under the confiscation act were in every respect similar to those employed in proceedings under the Internal Revenue acts. There was an executive seizure; the property was informed against; monition was issued and the *res* condemned in one case just as in the other. (See the several cases under this act.) The proceedings, too, in both cases are directed against the thing as the offender; the property is the subject of forfeiture or confiscation—that is, the offending thing—because of the fault of the owner.

In its application to the point at issue it is impossible to distinguish in practice or theory, between these two classes of proceedings.

But there is one distinction between these different proceedings, viz., the confiscation cases were determined by the law of nations, while the revenue proceedings were governed by the principles of common law. And it follows, therefore, that it is less incongruous to assume that revenue proceedings may be only acting against separate interests in real estate when the Court has the land before it, than it is to assume such a proposition when a condemnation of land under the confiscation act is the object of the proceeding.

Now, what is the principle affirmed in these confiscation cases? Simply, that when land is condemned, the *res* is only that interest in it which by statute is made the subject of forfeiture.

Bigelow vs *Forrest*, 9 Wall. 339, is the first of these cases. This was an action of ejectment brought by one Douglass Forrest, the heir-at-law of French Forrest.

In that case it appeared that under the confiscation act, "the right, title and interest, and estate of the said French Forrest in and to the said tract of land," had been condemned and sold under the decree of condemnation of the plaintiff in error to the grantee; and that said Forrest's estate was the fee. It further appeared that said Forrest had died, leaving the defendant in error as his heir-at-law, and that the said Douglass Forrest was one of the persons described in section 5 of the act, whose property was liable to confiscation.

It was *held* by the Court, that, under the explanatory resolution of Congress, "all which could, under the law, become the property of the United States, or could be sold by virtue of a decree of condemnation and order of sale, was a right to the property seized, terminating with the life of the person for whose act it had been seized."

The Court, on page 351, says: "It is argued, however, on behalf of the plaintiff in error, that the decree of confiscation in the District Court of the United States is conclusive that the right, title, interest and estate of French Forrest was condemned and ordered to be sold, and that as his interest was a fee simple, that entire fee was confiscated and sold. Doubtless a decree of a court, having jurisdiction to make the decree, cannot be impeached collaterally; but under the acts of Congress the District Court had no power to order a sale which should confer upon the purchaser rights outlasting the life of French Forrest. Had it done so, it would have transcended its jurisdiction, and it attempted no such thing. The decree made has not that meaning. It is true the cause in the District Court was entitled 'United States *against* all the right, title and interest of French Forrest in and to all that certain piece, parcel or lot of land,' (describing it); but all this is descriptive, not of quantity of estate, but of the subject of seizure, and that was land. The proceeding was required by the act of Congress to be *in rem*, and the decree condemned not the estate of French Forrest, but using its own words, 'the real property mentioned and described in the libel.' The marshal was ordered to sell the said property, the boundaries of which were given in the title to the decree. Had the purchasers looked at that decree, (and knowledge of it must be attributed to them) they would have seen that it was a decree of confiscation of the land, and they would be bound to know its legal effect. It is, therefore, a mistake to argue that the plaintiff below was permitted to impeach collaterally the decree under which the marshal's sale was made, or that the judgment of this Court impeaches it * * *

"It is further argued on behalf of the plaintiff in error, that the plaintiff below was barred against maintaining his suit by the latter clause of the fifth section of the act of 1862, which enacted that it shall be a sufficient bar to any suit brought by such person for the possession or use of such property or any of it, to allege and prove that he is one of the persons described in the section. * * * Was he, therefore, barred from maintaining the ejectment? The land was not seized and condemned for any act of his. * * * That proceeding was wholly *inter alias partes*."

The next of these confiscation cases in point is *Day* vs. *Micou*, 18 Wall. 156, which was a foreclosure case.

It appeared in this case that in 1865, in certain confiscation proceedings under the act, the United States had seized and on default had condemned certain lands of one J. P. Benjamin, which under the decree were sold to one Day. The lands were at the time subject to a mortgage made by said Benjamin to Madam Micou, in 1858. In 1868, Madam Micou brought her suit for the foreclosure of her mortgage, and said Day answered, setting up his title derived under the confiscation proceedings, and claimed to hold the property free from all liens, and he pleaded *res adjudicata*.

The Court affirmed *Bigelow* vs. *Forrest*, and *held* that the mortgagee's interest had not been divested by the decree of confiscation. Mr. Justice STRONG, in delivering the opinion of the Court, on p. 161, says: "What property was thus brought within the jurisdiction of the District Court? Beyond doubt the property which had been seized, that is, the estate and property of the offending person and no other. If it was a term, or an estate at will, or a life estate, or an estate in joint tenantcy or in common, whatever it was, it was the subject alike of seizure and condemnation. It is true proceedings *in rem* were ordered to be instituted in the District Court, but the question remains, what was the *res* against which the proceedings were directed? A condemnation in a proceeding *in rem* does not necessarily exclude all claim to other interests than those which were seized. In admiralty cases and in revenue cases, a condemnation and sale generally pass the entire title to the property condemned and sold. Decrees of a Court of Probate or Orphans' Court directing sales for the payment of a decedent's debts or for distribution, are proceedings *in rem.* So are sales under attachments or proceedings to foreclose a mortgage *quasi* proceedings *in rem*, at least. But in none of these cases is anything more sold than the estate of the decedent, or of the debtor, or the mortgagor in the thing sold. The interests of others are not cut off or affected. If, then, as we hold, the property and estate of J. P. Benjamin was all that was seized or all that could be seized and condemned in these confiscation proceedings, those who held other interests in the land were not bound to come in and assert their claims. Their interests did not pass to the purchaser at the sale, and they remain unaffected by the decree of condemnation and sale thereunder."

The Court, to be sure, does say, on p. 162, that "in admiralty cases, and *in revenue cases*, a condemnation and sale generally pass the entire title to the property condemned and sold," but it is respectfully insisted that "in revenue cases" under the statute forfeiting lands, no such distinction can be drawn.

In *The Confiscation Cases*, 20 Wall. 92, *note on claims of Marcuard*, p. 114, which was a confiscation proceeding, where it appeared that certain persons holding liens on the real estate condemned had been allowed to intervene for the protection of their claims, but the Court had refused to let them take the proceeds of sale; it was *held* that these persons "ought not to have been allowed to intervene. They had no interest, even if they were lien holders, in the confiscation proceedings," and that their liens could not be divested by the decree of condemnation.

See also *McVeigh* vs. *U. S.*, 11 Wall. 259.
Miller vs. *U. S.*, 11 Id. 292.
Tyler vs. *Defrees*, 11 Id. 331.
Brown vs. *Kennedy*, 15 Id. 591.
Confiscation Cases, 20 Id. 92–117.
Semmes vs. *U. S.*, (1 Otto.) 91 U. S. 21.

Osborn vs. *U. S.*, 1 Id. 474.
Wallach vs. *Van Riswick*, 2 Id; 92 U. S. 202.
Windsor vs. *McVeigh*, (3 Otto,) 93 U. S. 274.
Gregory vs. *McVeigh*, Id. 284.
Pike vs. *Wassel*, 94 U. S. 711.
Burbank vs. *Conrad*, 96 U. S. 281.
Burbank vs. *Semmes*, (9 Otto,) 99 U. S. 138.
French vs. *Wade*, (12 Otto,) 102 U. S. 132.
Waples vs. *Hayes*, 108 U. S. 6.
Waples vs. *U. S.*, 110 U. S. 630.

Now, what is the doctrine to be deduced from these cases? It is this: That while in forfeiture proceedings —proceedings against the thing—where real estate is concerned, at least, the decree of condemnation extends simply to the interests in the *res*, which are made by law the subjects of condemnation; and that other interests therein are not divested by the decree, and those other interests are not bound to come in and assert their claims. To use the language of this Court in *Day* vs. *Micou*, "their interests did not pass to the purchaser at the sale, and they remain unaffected by the decree of condemnation and sale thereunder."

In the case of *Ex parte Lange*, ~~28~~ 18 Wall. 163, this Court, in commenting on *Bigelow* vs. *Forrest*, and *Day* vs. *Micou*, on page 177, say: "Here was a case," (*Bigelow* vs. *Forrest*,) "of a proceeding *in rem*, where the property was in the power of the Court, and its authority to confiscate and sell under the statute beyond question; but the extent of that power was limited by the statute;" and speaking of the lack of jurisdiction of the Court in those cases to pronounce a decree condemning the fee, it asks, why could the decree have no greater effect than to subject the life estate to sale? and answers the question as follows: Not because it wanted jurisdiction of the property or of the offence, or to render a judgment of confiscation, but because in the very act of rendering a judgment of confiscation it condemned more than it had authority to condemn. In other words, in a case where it had full jurisdiction to render one kind of judgment operative upon the same property, it rendered one which included that which it had a right to render, and something more, and this excess is simply void.

Applying these decisions to the case at bar, we say: The Internal Revenue acts gave the Court power to condemn only (1) the interests in the land of the distiller, or (2) the interests of those persons who knowingly suffered and permitted the business of a distiller to be there carried on; that lienors under the New Jersey mechanics' lien act did not belong to the latter category, and that therefore their interests were not divested by the decree of condemnation set up in bar of the plaintiff's title.

The precise point under discussion seems never to have arisen in regard to titles derived under the revenue laws. The cases decided have all related to interests in land which the statute clearly intended to subject to forfeiture.

THE SIXTH POINT.

The forfeiture proceedings relied on by the defendant did not seek to reach the interests of the lienors in the land; and those interests the decree of condemnation did not attempt to divest.

Admitting that under the act the liens might have been divested, the forfeiture proceedings, if the construction of the statutes above contended for is correct, did not seek to reach the interest of the lienors and the lienors were not barred by the decree.

As we have seen, the interests of the lienors could only have been subjected to forfeiture, because their owners were guilty of the offence of knowingly suffering or permitting the business to be carried on on the land or of conniving at the same. That was the offence which made the right, title and interest of the lienors a guilty *res*. If the lienors committed that offence then the law placed them "on the same footing" as if they were the distiller; and if the distiller is shown to have violated the statute, their interests and the distiller's interest in the land are forfeited.

Dobbins' Distillery vs. *U. S.*, *supra.*

But the information does not charge any such offence; and it does not seek to reach any other interest in the land than that of Charles L. Sicher. Every offence charged is alleged to have been committed by Charles L. Sicher; and nowhere is the offence of suffering or permitting the business to be carried on charged to anybody.

The information in one place charges as follows:

"That Charles L. Sicher, then and there having a certain right, title and interest in the lot or tract of land on which said distillery was situated, did knowingly carry on the business of a distiller upon the said premises, and did connive at the carrying on of the said business, without having paid the special tax as required by law, and without having given bond as required by law, and with intent to defraud the United States of the tax on spirits distilled by him, against the 44th section of said last mentioned act."

(*Record*, p. 41, fol. 116.)

The above count was undoubtedly drafted upon a form which charged the offence we are considering. But by omissions of the pleader the original count was so emasculated as that what remained did not charge any offence defined in section 44 named, or in any other statute, and so with the following count. (p. 41, fol. 117.)

This count was probably stated in the original form from which it was taken, as follows:

"That   then and there having a certain right, title and interest in the lot or tract of land on which said distillery was situated, did knowingly suffer and permit some person or persons to said attorney unknown, to carry on the business of a distiller upon the said premises, and did connive at the said person or persons carrying on the said business, without said person or persons having paid the special tax as required by law, and without having given bond as required by law, and with intent to defraud the United States of the tax on spirits distilled by such person or persons, against the said 44th section of said last mentioned act."

It is easy to see what emendations were made by the pleader.

Some such count is usual in all informations under the act.

Abbott's U. S. Pr., p. 453.
U. S. vs. *Distillery*, 1 Int. Rev. Rec. 174.
S. C., 2 Abb. U. S. 192.

Property can only be forfeited because of some charge of guilt against it, either arising from its unlawful use or from the unlawful act of its owner.

When the real estate of others than the distiller is forfeited under the Internal Revenue laws, it is because the owners have subjected it to an unlawful use. But no such charge is made in the information against the real estate of these lienors.

If the interests of the lienors were also offending things, and were a part of the *res* proceeded against, then the information is defective in essential matters, and no decree affecting the title of the plaintiff can be based upon it.

The Mary Ann, 8 Wheat. 380.
The Anne, 7 Cr. 570.
The Divina Pastora, 4 Wheat. 52.
The Edward, 1 Wheat. 261.
The Adeline, 9 Cr. 281.
The Caroline, 7 Cr. 496.
Waples, Pro. in Rem. § 60.

Informations of the kind in question should propound in distinct articles the causes of forfeiture, and inasmuch as the information is in the nature of a criminal proceeding, the allegations must conform strictly to the statute upon which it is founded.

U. S. vs. *Huckabee*, 16 Wall. 414, 431.

The District Attorney recognized that the lienors had not committed the offences required to bring their property within the operation of the act, and therefore did not proceed against it. He purposely omitted to charge against their interests or to take action which would raise such issues in the case.

In setting forth the seizure, the lienor's interests are not included in a description of the property seized, and their property, as a *res*, was not brought within the jurisdiction of the Court. The advertisement of sale, (*Record*, p. 49, fol. 141,) and the deed from the marshal to Brown, the purchaser at the sale of the premises in controversy, also furnishes corroborative proof. That deed conveys only the "right, title and interest of the defendant, Charles L. Sicher."

(*Record*, p. 52, fol. 148.)

The Seventh Point.

Where the Internal Revenue laws forfeit real estate, the forfeiture is limited to "the real estate and premises connected" with the distillery, or to "the lot or tract of land on which" the distillery "stands" or "is situated." There is no averment in the information that the real estate in controversy bore such a relation to the distillery seized as subjected it to forfeiture, and therefore the Court transcended its powers in making a decree condemning said real estate, and said decree is of no effect as against the premises in controversy.

The real estate subject to forfeiture is defined in R. S., sections 3260, 3281 and 3305.

The information does not aver in any part, directly or in such manner as to lead to the inference, that the real estate in controversy was connected with the distillery, or that it was the lot or tract of land on which the distillery was situated. (*Record*, pp. 36 to 43.)

The default entered extended only to a confession of the matters charged in the information, and there having been no charge therein that the real estate in controversy was so connected with the distillery as subjected it to ferfeiture, the decree was not operative upon the real estate in controversy.

THE EIGHTH POINT.

The plaintiff is not concluded by the decree of condemnation relied on by the defendant.

A sentence of a court, professing to proceed *in rem*, is liable to be avoided upon showing that the tribunal had no jurisdiction over the *res* against which it proceeded, or that by the laws of its creation it had no authority to determine the question on whose determination its sentence is founded.

Freeman on Judgments, § 614.
Rose vs. *Himely*, 4 Cr. 241.

In the case last cited Ch. J. MARSHALL says: "Upon principle, it would seem that the operation of every judgment must depend upon the Court to render that judgment, or in other words, on its jurisdiction over the subject matter which it has determined."

Thompson vs. *Whitman*, 18 Wall. 457.
Pennoyer vs. *Neff*, 5 Otto, 714.
Benedict's Admiralty, p. 9, § 13.

See also the Confiscation Cases, *supra*.

A decree by default in a revenue case is not entitled to more effect than a judgment by default in a common law action *in personam*. To make such a decree conclusive, where the Court has jurisdiction, the informatiod must aver in facts necessary to a condemnation. The decree then establishes the facts pleaded.

But if the facts averred justify one kind of a decree only, any other decree would be void and is subject to collateral attack. If, for instance, on an information alleging facts which would justify a decree condemning personal property only, the Court would have no power to pronounce a decree condemning real estate, and such a decree would be of no effect as against the land.

Freeman, Judgments, § 618.
Miller vs. *U. S.*, *supra.*
Fitzsimmons vs. *Newport Ins. Co.*, 4 Cr. 185.
Munday vs. *Vail*, 5 Vr. (34 N. J. L.) 418.

In *Windsor* vs. *McVeigh*, 3 Otto, 274, which was an action of ejectment, where the defendant claimed title under a decree of confiscation in proceedings taken under the "Confiscation Act," it appeared that in the confiscation proceedings the owner of the seized premises had filed an answer, which had been illegally stricken from the files because of his being an "enemy." A default has thereupon been entered and the premises sold. The Court *held* that the decree so rendered was of no validity.

On page 282, the Court says: The doctrine, "that where a court has once acquired jurisdiction, it has a right to decide every question which arises in the cause, and its judgment, however erroneous, cannot be collaterally assailed, is undoubtedly correct as a general proposition, but, like all general propositions, is subject to many qualifications on its application. All courts, even the highest, are more or less limited in their jurisdiction. * * * Though the court may possess jurisdiction of a cause—of the subject matter and of the parties, it is still limited in its mode of procedure, and in the extent and character of its judgments. It must act judicially in all things, and cannot then transcend the power conferred by law. If, for instance, the action be upon a money demand, the court, notwithstanding its complete jurisdiction over the subject and parties, has no power to pass judgment of imprisonment in the penitentiary upon the defendant. If the action be for libel or personal tort, the Court cannot order in the case a specific performance of a contract. If the action be for the possession of real property, the Court is powerless to admit in the case the probate of a will.

"So a departure from established modes of procedure will often render the judgment void.

"The doctrine * * is only correct where the Court proceeds, after acquiring jurisdiction of the cause, according to the established modes governing the class to which the case belongs, and does not transcend in the extent or character of the judgment the law which is applicable to it."

In *Bradstreet* vs. *Neptune Insurance Co.*, 3 Sum. 600, which was an action upon a policy of insurance upon a vessel, the declaration alleging its loss by seizure of the Mexican government, the decree of the Mexican court was brought in question. After stating that the sentence of a foreign court of admiralty and prize *in rem* was in general conclusive, not only in respect to the parties in interest, but also for collateral purposes and in collateral suits, as to the direct matter of title and property in judgment, and as to the facts on which the tribunal professed to proceed, Judge STORY said that it was an essential ingredient in every case when such an effect was sought to be given to the sentence, that there should have been proper judicial procedings upon which to found the decree, and "that there should be some certain written allegation of the offence or statement of the charge for which the seizure is made, and upon which the forfeiture is sought to be enforced. It is a rule, founded on the first principles of natural justice, that a party shall have an opportunity to be heard in his defence before his property is condemned, and *that the charges on which the condemnation is sought, shall be specific, determinate and clear.* If a seizure is made and condemnation is passed without the allegation of any specific cause of forfeiture or offence, and without any public notice of the proceedings, so that the parties in interest have no opportunity of appearing and making a defence, the sentence is not so much a judicial sentence as an arbitrary sovereign edict. It has none of the elements of a judicial hearing."

See also, *The Mary*, 9 Cranch, 126.

And the grounds of condemnation must clearly appear on the face of the sentence; they must not be collected by inference only, or left in uncertainty. An ambiguous decree is not conclusive on any ground.

Freeman, *Judgments*, § 611.
Hobs vs. *Henning*, 17 C. B., n. s. 791.

See also, the dissenting opinion of Mr. Justice FIELD, in
Tyler vs. *Defrees*, 11 Wall. 331, 349.

THE NINTH POINT.

The Court, in the forfeiture proceedings, did not have jurisdiction over the *res*, and the decree of condemnation is therefore void.

If the construction of the statute herein contended for is correct, then the act made the interest of the distiller in land, and the interest of any one who subjected his land to the distiller's use, each separate *res*. One it forfeited because its owner had violated some requirement of the act. The other it forfeited because, first, its owner had subjected it to the distiller's use, and second, because of the distiller's offence; each is a separate *res*, just as various articles of personalty seized are separate *res*, or as personal property is a *res* distinct from real estate. Each is proceeded against on its own grounds—each is a defendant; otherwise it is not bound by the decree.

Therefore, in order to subject to forfeiture other interests in land than the distiller's, to give the Court jurisdiction over those particular *res*, it is necessary that those *res* be seized.

Jurisdiction in proceedings *in rem* is only obtained by seizure. Seizure is absolutely essential to the existence of the action, to the jurisdiction of the Court, to the validity of the condemnation.

Waples, *Proceedings in Rem*, § 42, and cases cited.
Miller vs. *U. S.*, 11 Wall. 294.
U. S. vs. *Winchester*, 99 U. S. 392.

The interests of the lienors in the land were not seized as a separate *res*, and, therefore, the Court did not have jurisdiction to pronounce a decree binding upon their owners.

For the reasons above given, the plaintiff respectfully insists that the judgment rendered in favor of the defendant should be reversed, and judgment should now be rendered in favor of the plaintiff, that he do recover possession of the premises, with costs.

Edward A. Day
Counsel for Pltff in Error

United States Supreme Court.

OCTOBER TERM, 1884.

HEIDRITTER,
vs.
ELIZABETH OIL CLOTH CO.
Error. (*No. 63.*)

Brief of JOHN R. EMERY, for Plaintiff in Error.

(Being a supplement to the foregoing Brief, with references to some additional cases.)

The action being that of ejectment, wherein the plaintiff recovers on the strength of his own title, two classes of questions or issues are raised, viz., (1) the validity of the plaintiff's own record title; (2) whether the defendant shows a title either in itself or outstanding in another, superior to the plaintiff's title. The plaintiff insists:

FIRST POINT.

(As to plaintiff's own title.)

The objection to the validity of the plaintiff's title, by reason of the failure of the lien claimant to name the United States as "owner of the premises," in the lien claim filed under the mechanics' lien law of the State of New Jersey, and also of the failure to make the United States a party defendant in the suit in the claim, as such owner, is not well founded for the reasons:

(1.) That at the time of filing the claim and commencing the suit thereon (Feb. 21, 1873,) the interest of the United States in the premises was not that of a legal owner in the sense of the statute, but was only a right to have the question of its ownership subsequently tried, ascertained and declared by the District Court on the then pending forfeiture proceedings, and its title as owner was not perfected until judgment of forfeiture and condemnation, made subsequent to the filing of claim and commencing suit, (Feb. 25, 1873.)

(2.) That the United States could not have been made a party defendant to the suit on the lien clain, even if its title as owner had been perfected at the time of the suit.

Authorities as to (1), that the title of the United States under proceedings for forfeiture, is not perfected until a decree or judgment of condemnation by a competent court. (Cases in Mr. Day's brief, p. 13, fol. 20, &c., and p. 14.)

Also, *Tracy* vs. *Corse*, 58 N. Y. 144, 149, (1874.)

Authorities as to (2), that the United States, in the absence of its own statute permitting it, cannot be sued, (if citation is not superfluous.)

Reeside vs. *Walker*, 11 How. 272, 290, (1850) and cases cited.

Case vs. *Terrill*, 11 Wall. 199, 201, and cases cited.

SECOND POINT.

(As to the defence of superior title in defendant, or outstanding in another.)

The defendant's own deed, (*Rec.* p 52, fol. 148,) in terms extended only to the "*right, title and interest of Sicher in the premises*," which alone was advertised for sale, (*Rec.* p. 50, fol. 141,) and as Sicher's right and interest at the time of the seizure (Jan. 24, 1873—*Rec.* p. 36, fol. 100,) was *subject* to the lien claim, the title under which related back to June 25, 1872, (statutes, &c., cited in Mr. Day's brief, p. 10, fol. 30, and p. 11,) defendant's own title would appear to be no bar, and the plaintiff was entitled to judgment, unless the United States, under the decree of forfeiture and condemnation, has an outstanding superior title. As to this plaintiff insists:

(1.) That the interest of the lien claimant was not, under the Internal Revenue laws, liable to seizure and forfeiture for the illegal acts of the distiller for which seizure was made. (Treated at length as the *Third Point, infra,*) and,

(2.) That the decree of condemnation did not operate to condemn the lien claimant's interest. (Treated at length as the *Fifth Point, infra.*)

THIRD POINT.

Forfeiture of the real estate in question is claimed to have been incurred by reason of illegal acts of Sicher, the distiller, and under act of July 20, 1868, §§ 7, 19, 22 and 44, 15 *Stat.*, 127, &c., (information in *Record*, p. 39-42.) Plaintiff insists, (1) that by the true construction of this act, the illegal acts of the distiller do not subject to forfeiture, the estates or interests of other persons in the real estate employed in his business and which were acquired prior to the commission of the offences, unless these persons suffer, permit or connive at carrying on the business of distilling upon the premises: and (2) that where this prior interest is of such a nature, that the owner or holder thereof, up to the time of the commission of the offences, neither had nor could have, any power to prevent the use of the property, or to control its use to any extent, such interest is not subject to forfeiture by reason of a permission, sufferance or connivance. (Treated at length as *Fourth Point.*)

As to (1)—the true construction of the act in reference to the extent of the forfeiture of other interests than those of the distiller.

The 44th section expressly restricts the forfeiture of these other interests to the limits above stated, and plaintiff insists that the express and specific language of this section must restrain what is claimed to be the unlimited forfeiture of the lands with all estates in it, under §§ 7 and 19, for the following reasons:

1st. The causes of forfeiture mentioned in the 44th section, include every cause of forfeiture mentioned in the 7th and 19th, together with others, and the specific designation of the extent of forfeiture in the 44th, is paramount to and controls, the general language of the 7th and 19th.

2d. As to the 7th section, the causes of forfeiture are identical, both as to act and evidence, with those mentioned in the first division of the 44th section, and as neither punishment nor forfeiture can be lawfully inflicted twice for the same act, the 7th section, if it provides for a heavier forfeiture for the same act, must either be reconciled with the *later* 44th section or be considered repealed, so far as inconsistent with the latest expression of legislative intention.

AUTHORITIES: *3 Whart. Crim. Law*, § 3397, as to double sentences for the same act or offence, on the same indictment with different counts. Also *ex parte*, *Lange*, 18 Wall., 168, as to general principles relating to double punishment.

The Distilled Spirits, 11 Wall. 356, 394, (1870,) as to the act of a "removal of spirits procured by false and fraudulent bond," being equivalent to "a removal not according to law."

Potter's Dwarr. Stat., 118, &c.; *Townsend* vs. *Brown*, 4 Zab. (N. J.) 80, 86, (1853,) and cases cited; and *Packer* vs. *R. R. Co.* 19 Pa. St. 211, as to the later of two repugnant clauses of a statute prevailing over the earlier.

3d. As to the 19th section, although the specific offences therein designated as causes of forfeiture are only evidence, either alone, or along with other acts, of the offences designated under the 44th section, yet the circumstance that the latter section, which was intended to reach frauds under the 19th section, and all other frauds, in carrying on the business of distilling, provides a *more limited* forfeiture than the 19th, is of importance in considering which of the two sections expresses the paramount and prevailing intention of the act, in reference to that part of its policy, which relates to the punishment of frauds on the revenue by forfeiture.

4th. *And mainly*, the general scope of the act and the provisions of its sections, other than the 44th, restrain the operation of the general language of the 7th and 19th sections within narrower limits than their words are claimed to import. (This is a proper restriction if the Court is satisfied that the literal meaning would extend to cases never intended to be embraced, *Brewers Lessee* vs. *Blougher*, 14 Pet. 198.)

The act in its general character was a revision of the entire Revenue law relating to spirits and tobacco, and introduced into English and American law for the first time the principle of forfeiture of land and real estate.

See *Acts* June 30, 1864, 13 Stat. 223–306; *Act* July 13, 1866, 14 Stat. 98, &c., which forfeited only personal property in the possession of the distiller or used in the business.

The general principles which should regulate the forfeiture of the property of others for the illegal acts of a distiller in possession of it, naturally differ with the character of the property as personal or real. Personal property, such as could be used in the business of distilling, is movable with the owner; the *right* to the *possession* of it is legally attached to his person, and can only be severed by his express or implied consent; the interests in it can be only few and simple; its possession is always *prima facie*, and usually the only evidence of its ownership. Congress, therefore, under its power to punish frauds on the revenue as a means of collecting duties and excises, may well be held to have authority to forfeit all personal property used by the distiller, whether owned by him or not, upon the ground that his possession is conclusive evidence either of his own ownership or of the owner's authority to use it in the business.

Real estate, on the contrary, is the fixed and immovable subject of the greatest variety of interests and estates; many of these interests are not connected with the possession, and give their owners no control or exercise over it; nearly all of these interests are now, by statutes, made dependent for their very existence, upon written or record evidence, independent of possession, and in their creation or continuance possession forms no element. And many of them also are held by persons incompetent to perform legal acts in relation to them. For these and other considerations, Congress would not be disposed, even if it had the power, to make the simple possession of the real estate by the distiller, conclusive evidence of a consent to its use in his business on which to base the forfeiture of the interests of others for his illegal acts. We find, therefore, *the 7th and 8th sections*, together with the supplement of April 10, 1869, 16 Stat. 41, to the 8th section, requiring *express consent* of the other persons interested in the lands to the forfeiture of their interests, and these show clearly the paramount intention of the legislature to restrain forfeitures under the act to the specific estates and interests mentioned in the 44th section.

The 8th section, with its supplements, are not only meaningless, if the wide scope now claimed is given to the 7th and 19th, but are altogether *delusive*, toward those who acquire interests on the faith of their efficacy and protection.

5th. It may well be doubted whether the constitutional power of Congress to create forfeitures for frauds on the revenue, which is derived from its power to lay and collect duties and excises, (*United States* vs. *Singer*, 15 Wall. 111,) would extend to the forfeiture of other property than that of the guilty party, *as a punishment for frauds in non payment of the taxes or excises levied and imposed on the guilty party alone*, unless such forfeiture is grounded on the consent to the use of the property by the distiller in his business; and further, unless the acts or circumstances which Congress makes the conclusive evidence of such consent, be such as under usual and ordinary circumstances are sufficient to establish consent.

The construction of this act, in reference to the extent of its forfeitures has not been passed on by this Court, but some light may be thrown on its views by the cases, *U. S.* vs. *Emholt*, 105 U. S. 414, (1881), and *Dobbin's Distillery Case*, 96 U. S. 395, where the forfeiture, although claimed under the 19th section, (not expressly requiring consent,) was distinctly placed upon the ground of the owner's consent. (See Opinion, pp. 399, 401.)

A similar construction has been given by this Court in cases of forfeitures arising under the confiscation and insurrection laws. *Union Insurance Company* vs. *United States*, 6 Wall. 759, (1867), Confiscation Act of 1861, *Kirk* vs. *Lynd*, 106 U. S. 315, (1882), same law.

FOURTH POINT.

The interest of this lien claimant in the lands was of such a nature that up to the time of the sale under the judgment and execution thereon, Sept. 24, 1873, (*Record*, p. 35, fol. 98,) he had no right or control over the use of the property in the hands of the distiller, and was therefore not subject to forfeiture under the act by reason of a permission, sufferance or connivance.

Under the lien, lien claim, or judgment and execution thereon, the claimant has no estate in the land, no right to the possession or to control the possession, and he has only a lien on the land, with a statutory power of sale. (See Mr. Day's brief, pp. 7–10, for statute.) Also, *Bloom* vs. *Welsh*, 3 Dutch. 177, 182, (N. J. Supt. Ct.) that a judgment creditor has only a lien with a statutory power of sale.

Den vs. *Young*, 7 Halst. 301, (N. J. Sup. Ct. 1830,) that the sheriff has no interest in lands under an execution, nor any right to possession or possessory action.

The title of the lien claimants related back to June 25, 1872, (the commencement of the building,) a period necessarily prior to that of commencing the business, and, in furnishing materials for the building, the material men, even if they knew the building to be intended for a distillery, were entitled to rely upon the provisions of the 8th section, which were intended to protect their liens against forfeiture, without their consent. Their express written waiver and consent to forfeiture, if given as required by this section, would operate as a "permission, &c.," under the 44th section, but in the absence of such written waiver, (or of fraudulent combination with the distiller to continue their liens over the premises,) there is, we insist, no method in which their liens could be liable to forfeiture under a permission, sufferance or connivance

If, then, under the act of July 20, 1868, the interest of the lien claimant was not in fact subject to forfeiture, the next question is whether the question of its forfeiture has been conclusively adjudicated by the proper court, and upon this the plaintiff submits:

Fifth Point.

That the decree of condemnation did not operate to forfeit or condemn the lien claimant's interest, for the reasons (1) that on proceedings for forfeiture of real estate the *res* or thing to be declared forfeited, is either the interests therein subject to forfeiture, or the land itself, *subject to* interests therein which are not liable to forfeiture; (2) that in the absence, as in this case, of any allegations that other interests than those of the distiller are subject to forfeiture, and in the absence of any hearing upon this question, a decree of forfeiture of the lands, however broad its terms, will not operate to forfeit the lands except subject to the interests and estates of others acquired prior to the commission of the offences charged.

(1) In forfeitures under the Confiscation acts, the *res or thing* to be seized and forfeited is held to be only *the interests in the land* subject to forfeiture.

See cases cited in Mr. Day's brief, (pp. 37–43.) In *United States* vs. *Emholt, supra,* (forfeiture under the Revenue laws,) the *res* or thing forfeited seems to have been considered the *land itself subject to* interests not forfeitable.

The proceedings for forfeiture under the act are only legal forms to be used for carrying out the true intention of the act, and they must be moulded, framed, or if necessary, created by the courts, so as to protect interests which are not subject to forfeiture.

The argument which is drawn from the supposed analogy of these proceedings, to those of proceedings in admiralty to seize and forfeit vessels, and which, therefore, insists that the land itself, with all interests in it, is seized as a guilty thing, and must be forfeited like a vessel, as a thing in gross, is misleading, because in this particular the analogy does not exist, and because the argument is substantially a claim, that the interests declared saved by the statute, cannot be saved by the courts, on account of their forms of proceedings—a doctrine expressly repudiated by this Court in the Confiscation cases.

The analogy to proceedings in admiralty for the forfeiture in gross of personal property like vessels, as the *res* or thing, if pressed to the above limits is further misleading, because a vessel in possession of the master, may fairly be presumed to be in such possession, by the consent of the owner or other persons interested, not only for the reasons above applied to personal property, (*supra*, Point 3,) but for the two additional reasons, (1), that a vessel can be put to but a single use, that of navigation or commerce, and the owner's consent to the liability of the vessel *as a thing* for violations of laws (national or international,) regulating navigation and commerce, is conclusively presumed; (2), the vessel is, in fact, the guilty thing, and like cattle damage feasant upon land, is held as such guilty thing, independent of the question of who owns interests in it, for *satisfaction* of the damages.

On the other hand, the *express* consent of owners of lands and buildings to the use of their interests for distilling, should be required as a basis for their forfeiture, because distilling is only one of the thousand uses to which lands and buildings are put, and also because the buildings and lands which support the *guilty stills and personal property*, are no more guilty things in fact, than the water on which the vessel floats, is guilty of the vessel's acts.

The statutes directing proceedings for forfeiture under revenue laws, direct only, that the proceedings shall be *in the nature of* a proceeding *in rem*, and not that they shall be *identical with* proceedings *in rem in admiralty*, as distinguished from proceedings *in rem* in other cases.

Act 1864, § 48, 13 St. 240, *Rev. St.* 3453, proceedings to enforce forfeiture of *personal property*, to be in the nature of a proceeding *in rem*, &c.

See opinion of Strong, *J.*, (18 Wall., 161, 162,) for statement of differences in the extent of different kinds of proceedings *in rem*.

Next, as to the position that the land is to be forfeited as a thing in gross, and that rights therein not forfeited are to be protected by prior payment out of the proceeds of sale. (See opinion of Circuit Judge.) The District Court had original and exclusive jurisdiction of the seizure and suit for forfeiture, and had therefore the right, (probably also exclusive,) of determining in the proceedings what interests in the land were subject to forfeiture. The proceedings, however, are (at least, in the first instance,) for the sole purpose and object of determining what property is forfeited to the United States, which on the forfeiture becomes, by the decree, *the owner of the property declared forfeited*, and if, in these proceedings, it is determined that any interest in the lands is not subject to forfeiture, the decree should adjudge the forfeiture of the land *subject to such interest*, (as in *U. S.* vs. *Emholt, supra*,) and cannot in such case, (without the consent, at least, of the holder of the prior interest,) adjudge the land with all interests therein forfeited, and that the prior interests shall be first satisfied out of the proceeds of sale.

A decree *for sale of lands* has no proper place in a decree of forfeiture, the sole object of which is to adjudge title to be in the United States, and we find no statutory provisions for such sale of the land in the decree for condemnation, as there is in the case of seizures of personal property.

By act of June 6, 1872, § 12, 17 *Stat.* 240, where distillery forfeited because bond not given, (offence alleged here,) *still, &c., to be destroyed* and materials sold. Act July 20, 1868, § 58, *Rev.* 3334. Spirits may be sold by order of court, subject to law.

Rev. St., 3450, (act July 13, 1866, § 14,) sale of forfeited boiler, &c., and *material*, authorized to be ordered by court.

(2) Plaintiff next insists that where it is intended to subject to forfeiture other interests in the lands, than those of the guilty distiller, the information for forfeiture should disclose the claim to forfeit other interests by reason of their permission, sufferance or connivance, in carrying on the business. Designation of the holders of the interest by name may not be necessary, but the fact that such interests are claimed to exist and to be forfeited, must appear on the information, if it is intended to forfeit them. On this information, (see *Record*, p. 41, fol. 117,) this usual form of charging the consent of other persons interested is omitted, and there are no allegations of their existence or of the facts (consent, &c.,) necessary to bring their interests within the statute.

In the absence of such allegations in the information, there was no issue tendered upon which the United States could proceed to the forfeiture of other interests than the owners, and the publication of notice of the filing of this information, even if brought to their notice, was no notice of any claim to the forfeiture of their interests.

The decree of condemnation, however broad or general its terms, can operate only as a decree forfeiting the interests, as to which the information alleged causes of forfeiture, and if set up as a decree divesting other interests, as to which no causes of forfeiture are alleged, it is, to that extent, absolutely ineffective and void, for want of jurisdiction, and must be so held when questioned collaterally..

(See cases in Mr. Day's brief, pp. 37, 42.)

Also, *Windsor* vs. *McVeigh*, 3 Otto, 274, 282.

Also, *Munday* vs. *Vail*, 5 Vroom, 418, (N. J. Sup. Ct. 1871,) and cases cited. Here a bill in equity had been filed by a creditor to declare a conveyance by his debtor void *with respect to his claim.* The debtor and his alleged fraudulent grantee were defendants. The decree, made after due contest, declared the deed *absolutely* void, and not merely void against the complainant. On ejectment brought by the heir-at-law of the fraudulent grantor, claiming that the effect of the decree was to avoid the deed absolutely, *inter partes*, the Court on full discussion of the nature and principles of jurisdiction, as to the aspect of it now in question, held that the decree was not conclusive, as to the effect of the deed, *inter partes*, for the reason that it went beyond the issues raised.

In the present case the rule of limiting the effect of the decree to matters properly within the issue should be most strictly followed, as the decree was entered on default, and no intendments can be made in its favor.

SUMMARY.

The legal position of the plaintiff in error is thus based on these propositions:

1st. That the 44th section of the act of July 20, 1868, is the only provision under which the lien claimants' interest in the land in question could be forfeited to the United States.

2d. That it could be forfeited only on the conditions specified in this section.

3d. That in proceedings to forfeit this interest (either alone or in connection with other interests in the lands,) the information must state (either generally or by specific designation of the lien claimant,) that the interest is claimed as forfeited, and the facts requisite to its forfeiture.

4th. That where such statements and claim of forfeiture are not made in the information, a decree thereon, by default, cannot operate to forfeit them, and a decree, including them as condemned, is to that extent void for want of jurisdiction.

5th. That the existence of the facts subjecting the interest to forfeiture, cannot be made an issue in this suit, or in any other proceedings, than those directly instituted for the purpose, in the court having exclusive jurisdiction to determine the forfeiture.

6th. That the information in this case, having failed to claim expressly the forfeiture of the lien claim, (or any other interests than Sicher's,) and to allege the facts necessary to its forfeiture, the decree of forfeiture therein vested the title to the lands in the United States, subject to the lien claim and the title of the plaintiff thereunder.

JUDGMENT NOW CLAIMED.

Upon the whole case, therefore, plaintiff submits that there was error in admitting the decree of condemnation, &c., as a bar to plaintiff's title, (second assignment of error,) and also in entering judgment for defendant upon the findings, (6th, 7th and 8th assignments of errors.)

The judgment should be reversed, and according to the practice of the court on writs of error upon special findings, (which are equivalent to special verdicts, 9 *Wall.* 125, 127; *Id.* 461, 467; 11 *Wall.* 139; 18 *Wall.* 249,) should now be rendered for the plaintiff in error.

Rule 3. Practice of King's Bench followed.
1 *Arch Prac.* *235, and cases cited.

John R. Emery
for Plff in Error.

11214

SUPREME COURT OF THE UNITED STATES.

No. 69. October Term, 1884.

AUGUST HEIDRITTER,
Plaintiff in Error,
vs.
THE ELIZABETH OIL CLOTH COMPANY,
Defendant in Error.

In Error to the Circuit Court of the United States for the District of New Jersey.

Argument for Defendant in Error.

Supreme Court of the United States.

AUGUST HEIDRITTER,
Plaintiff in Error,
vs.
THE ELIZABETH OIL CLOTH COMPANY,
Defendant in Error.

In ejectment.

On writ of Error to the Circuit Court of the United States for the District of New Jersey.

Argument for Defendant in Error, by John F. Dillon and J. Tredwell Richards.

STATEMENT OF FACTS.

This is an action of ejectment to recover possession of certain lands situate in the city of Elizabeth, county of Union, and State of New Jersey. Both the plaintiff and the defendant claim title through Charles L. Sicher.

The defendant claims under a marshal's deed, given upon a sale of said premises, under a decree of forfeiture and condemnation to the use of the United States.

The said forfeiture arose and was enforced in the following manner:—Some time in the month of August or September, 1872, Charles L. Sicher commenced the business of distilling upon the premises in question, in a building erected by him on said premises for that purpose, a short time prior thereto.

On the 24th day of January, 1873, the said distillery and premises, with all the personal property thereon, were seized by the United States Revenue Officers, for violation of the revenue laws.

On the 4th day of February, 1873, an information was filed in the Clerk's office of the United States District Court, for the District of New Jersey, alleging such seizure for violations of sections 7, 19 and 44, of chapter 186 of the Act of July 20th, 1868, entitled " An Act imposing taxes on distilled spirits and tobacco, and for other purposes," and of other sections of the same and other acts of Congress, committed on said premises by said Sicher, who was then the owner of record thereof, in the prosecution of his said business, as distiller. The information concluded with a prayer for the usual process of attachment, and of monition to all persons claiming an interest in said property to appear, to the end that the usual proceedings being had, the property might be condemned as forfeited to the United States, and be sold, and the proceeds distributed according to law.

On the 19th day of February, 1873, return was made by the United States Marshal that he had taken possession of said premises, etc., and had given due notice to all persons to appear.

On the 25th day of February, 1873, the default of all persons having been duly entered, the said Charles L. Sicher, by whom the offences had been committed, having departed from the State and from the country, a decree was rendered in the United States District Court, that the said property, etc., be condemned as forfeited to the United States, and that the same be sold and the proceeds distributed according to law.

On the 22d day of May, 1873, by virtue of an execution issued under said decree, the said premises were sold by the United States Marshal to E. G. Brown, for the sum of $1,500, and a deed thereof, given to said Brown by the marshal. The proceeds of said sale were paid into Court to be distributed according to law, and no claimant intervening, the balance remaining, after deducting necessary expenses, was paid over to the use of the United States.

The said premises were subsequently conveyed by said Brown, by warranty deed, and were, after several mesne conveyances, conveyed to the defendant, who is now in possession thereof.

The plaintiff claims title under two mechanics' lien claims, alleged to have been filed against the premises in question under the Mechanics' Lien Law of New Jersey, approved March 11th, 1853, (Nixon's Digest, p. 571) and to have been enforced under the following circumstances:

I.—A lien claim of August Heidritter, the plaintiff in this case, alleged to have been filed on the 21st day of February, 1873, in the Clerk's office of Union County, New Jersey, against Charles L. Sicher, as builder and owner, for materials furnished between June 21st, 1872, and August 23d, 1872, for the erection of the distillery on the premises in question.

II.—A lien claim of the firm of F. Blancke alleged to have been filed on the 13th day of March, 1873, in said Clerk's office, against said Sicher, as builder and owner, for materials furnished between September 7th, 1872, and December 30th, 1872, for the erection of said distillery.

It is important to observe that neither of these lien claims was filed against said premises until after said premises had been seized, and while they were held in the custody of the United States District Court, and that the lien claim last mentioned was not filed until after the decree had been rendered by the United States District Court, condemning the property as forfeited to the use of the United States; but nevertheless, the said lien claims were filed against Charles L. Sicher, describing him as owner, although said Sicher had departed from the State and was beyond the jurisdiction of the Court. No other person was named in either of the lien claims as owner, nor in any way mentioned as having an interest in the premises; the United States were not so named or mentioned, although actually in possession of the premises claiming to be owner thereof, of which possession the lien claimants had actual knowledge.

It is also important to observe that the materials on which the lien claims are founded were furnished to the said Charles L. Sicher with the full knowledge on the part of the persons furnishing them, that the business of said Sicher was that of a distiller, and that the said materials were to be used in the erection of a distillery.

These claims were subsequently enforced as alleged by the plaintiff in this cause, against the said Charles L. Sicher as builder and owner as follows:

Summons was issued on the claim first mentioned on the 21st day of February, 1873, and on the claim secondly mentioned on the 15th day of March, 1873, in both cases against Charles L. Sicher as builder and owner, and against no other person, he being the only person who was made defendant. On an affidavit that said Charles L. Sicher could not be found in the State nor his post office address ascertained, and that his residence was unknown to the plaintiffs, a summons in each suit was served by publication, as prescribed by the Mechanics' Lien Act in such cases.

Judgment on both of the lien claims above mentioned, were entered by default against the said Charles L. Sicher as builder and owner, on the 14th and 18th days of June, 1873, respectively; special writs of *fieri facias* were subsequently issued on said judgments against said premises, and sale thereof was made under said writs, by the Sheriff of Union County, New Jersey, to August Heidritter, the plaintiff in this suit, and one of the lien claimants, for $100, and a deed of the same executed by said Sheriff to said Heidritter.

The United States were not made parties to the proceedings to enforce said liens, nor had they notice, either actual or constructive, of said proceedings. They did not voluntarily appear therein. They could not have interposed a defence, nor have obtained a hearing, had they so desired. They were neither parties nor privies to the actions, notwithstanding the fact that the premises were actually in their possession as owners, and were in the custody of the United States District Court, which possession and custody were not relinquished except to the person to whom the United States sold.

The said premises have from the time of seizure to the time of the commencement of this action, a period of over six years, remained in the undisturbed and undisputed possession of the United States and its grantees. During said period, buildings of the estimated value of $100,000 have been erected upon said premises by the present and former owners thereof.

Neither the plaintiff nor any one claiming under him has taken possession of said premises, nor endeavored to take possession thereof ; until the commencement of this suit.

Amount of lien claim judgments, about..	$1,900
Plaintiff purchased premises at Sheriff's sale, under said judgments, for	100
Value of premises at time of such purchase was about...........................	1,500
Value of premises at present time as improved by defendant and those under whom it claims, about................	100,000

DEFENDANT'S POINTS.

I.

I.—The forfeiture of the distillery and of the land on which it stands, declared by the 19th section of chapter 186 of the Act of July 20th, 1868, entitled "An Act imposing taxes on distilled spirits and tobacco, and for other purposes," is paramount to any former title or lien claimed by the plaintiff under the mechanics' lien law of the State of New Jersey. The intention of the act is to have a remedy against the instrument employed in the violation of the law, irrespective of the interests of particular persons in it. By acquiring interest in the thing, all persons assume the risk that the thing will become subject to the provisions of the act, and, by violations thereof, liable to forfeiture. The forfeiture is, according to the ordinary sense of language, absolute and without an exception in favor of any part of the thing or any interest in it.

1st. Such a construction does not violate any constitutional provision, but is within the direct scope of the express powers conferred on the general government.

In the case of Henderson's Distilled Spirits, 14 Wallace, Justice Clifford says at page 59:

"Congress possesses the power to levy taxes, duties, imposts and excises, and it is as clear that Congress may enact penalties and forfeitures for the violation of such laws as it is that Congress may levy the taxes or duties, or pass laws for their collection, safe keeping or disbursement."

The act in question is stated to be one imposing a tax, and the forfeiture is but a method of enforcing the tax, and carrying into execution the provisions of law made to facilitate its collection.

The 18th clause of section 8 of the Constitution of the United States provides that Congress shall have power to make laws which shall be necessary and proper for carrying into execution all powers vested in the Government of the United States, and among the powers enumerated is the power to lay and collect taxes, &c., as set forth in the first clause of that section.

Forfeitures of the property which becomes instrumental in a violation of law, have long been a favored method of enforcing compliance ; and the only constitutional limitation imposed, is that in the 18th clause, which in effect provides that such forfeitures shall be necessary and proper for carrying into execution other provisions which are themselves within the power of Congress to enact. The forfeitures must be suitable and calculated to promote the purpose which they are ostensibly designed to effect, and must not be merely colorably connected with the object of the Act to which they relate, and really a ~~mere~~ pretext for arbitrary confiscation.

Forfeitures of this sort had been in use in England, and were a principal means of securing the collection of revenue, prior to the Revolution.

See Mitchell *vs.* Torup, Parker's Reports, 227, and statutes there cited, by way of example.

Car. 2 C. 11 S. 7.
7 and 8 W. 3 C. 28, S. 8.
10 Geo. 1 C. 10, S. 27.
24 Geo. 2 C. 41, S. 22.
1 W. and M. C. 32, S. 2.
8 Anne, C. 13, S. 16.
12 Geo. 2 C. 24, S. 11.
Blewitt *vs.* Hill, 13 East, 13.

It is significant that the first National Congress, in which sat the framers of the Constitution, enacted similar forfeitures, as a most obvious and convenient method of enforcing laws to which they related; among others, sec. 12, ch. 5, of Session 1st, entitled "An Act to regulate the collection of the duties imposed by law on the tonnage of ships or vessels, and on goods, wares and merchandises imported into the United States," passed July 31st, 1789.

Similar forfeitures were declared by the Embargo Acts, by the Slave Trade Act, the Act to protect the commerce of the United States and to punish piracy, and in continuous legislation to secure collection of the revenue.

> The United States *vs.* The Brig *Malek Adhel*, 2 How., 223.

Under the various statutes mentioned the forfeitures have been construed to be absolute of the thing itself, and the constitutionality of the forfeiture seems never to have been doubted. We can find only a single case where the question was raised, and the constitutionality of the forfeiture was there maintained.

> The United States *vs.* The Distillery in West Front street, 2 Abb. U. S., 192.

Upon the constitutionality of the Revenue Statutes generally, see

> United States *vs.* Singer, 15 Wall., 111.

2d. Such construction is obligatory. The language of the 19th section is plain and direct, and its meaning necessary.

The statute distinctly describes specific property, and declares it forfeited upon a certain contingency. It does not distinguish between or recognize any particular titles or interests in the thing, but ~~no~~ has regard simply to the thing itself, and to those external relations and conditions into which the thing is brought by persons having the charge and control of it, whoever they may be. The thing being the offender in this sense, that it must be presumed to abide by the conduct of its custodians in relation to it.

The United States *vs.* All the Distilled Spirits, &c., 8 Int. Rev. Rec., 81.
Dobbin's Distillery *vs.* The United States, 6 Otto (96 U. S.), 399.
Henderson's Distilled Spirits, 14 Wall., 44.
United States *vs.* Mackoy, 2 Dill (C.C. R.), 299.
United States *vs.* Three Tons of Coal, 6 Bissell, 379, see opinion of Dyer, *J.*, at page 387, &c.

"For some purposes and within certain limits, every government may, without any violation of principle, exert its sovereign authority over the real and personal property subject to its jurisdiction, by laws operating directly *in rem*, and not limited to the rights of particular persons, and thus conclude all the world from disputing the title transferred or created by the proceeding. Thus the jurisprudence of most countries, as well as our own, renders adverse possession a bar to every right which is not enforced within a specified time. The sale of land for the payment of taxes will pass a good title against all the world, whether notice has or has not been given to the owner."

Smith's Leading Cases, Vol. 2, p. 813.

And it has never been held in such case

that the privity or consent of the persons interested in the thing was in any degree necessary in order to include their interests in the forfeiture. The thing itself is forfeited, their interests being a mere incident.

Soren *vs.* Torup, Parker's Reports, 227.

Argument may also be found in the language of sections 3062 and 3106 of Title 34 of the United States Revised Statutes. Forfeitures are there declared in language like that of the 19th section under consideration, and it is evident that the Legislature regarded those sections as they stand by themselves to import an absolute forfeiture of the thing in its entirety, without exception in favor of any interests, for they deemed it necessary, expressly—to qualify them, and by section 3063 of the same title, it is accordingly provided that the forfeitures mentioned shall not be incurred in respect to the thing, unless it shall appear that the owner, superintendent or agent of the owner, in charge thereof at the time of the unlawful act was a consenting party, or privy to the unlawful act.

※ So, in the 44th section of the act in question, the forfeiture is specifically ~~declared against~~ restricted to the interests in the distillery and land of such persons as have permitted or connived at the business of a distiller being there carried on.

The Legislature evidently understood and contemplated a distinction between forfeiting a thing and forfeiting particular interests.

It is also of some weight that the forfeiture declared in the 19th section comprehends within the same provision, and the very same sentence, a forfeiture both of the distillery and of the land on which it stands, and also of all personal property of every kind and description on said premises, used in the business there carried on ; and it has never been doubted that the forfeiture of the personal property, under that clause, was absolute and swept in the rights of owners, prior mortgagees, and lienors.

II.

The question of the construction of the 19th section is not open to inquiry in the case at bar. That was involved in the decree in the seizure case, and is presumed to have been decided with such effect as would sustain the decree in its present form.

Every question of statutory construction which was properly drawn, in issue is ~~to be~~ taken to have been settled consistently with the decree made.

Neither the decree nor the construction of the statute on which it is based, can be inquired into or impeached collaterally.

The plaintiff cannot now question the forfeiture on the ground that the facts on which it is based are not true, and that the offences for which the distillery and lands were condemned to forfeiture never were committed. The Court in this proceeding will refuse to inquire into any question but that of the jurisdiction upon which the condemnation proceedings were founded, and to ascertain that the forms of a judicial proceeding were observed.

> Not only are judgments and decrees in general conclusive upon all questions of fact actually raised in the proceeding, but upon those which *might* have been affirmatively set up by way of defense.
>
> Even more, judgments are conclusive upon all questions of statutory construction, and of law generally, which were involved in them,

or which might have been raised upon the hearing.

Benjamin *et al.*, *vs.* The Elmira, &c., Railroad Co., 49 Barb., 441.

Affirmed in the Court of Appeals in 54 N. Y., 675.

Wood *vs.* Wilson, 4 Houston (Del.), 94.

Greene *vs.* Greene, 2 Gray (Mass.) 361.

Prudam *vs.* Phillips, Hargrave's Law Tracts, 456 (note).

III.

In the cases cited above the suits were *inter partes*, while the condemnation suit was a proceeding *in rem*. But the decree in that suit was equally conclusive upon all the world, as a decree in a suit *inter partes* is upon the parties named in the record.

In proceedings *in rem* all the world are parties and have constructive notice of the proceedings.

It is as much necessary for persons claiming liens and interests in the *res* to intervene and set them up to prevent their being foreclosed by a decree of condemnation, as it would be to appear and defend a foreclosure suit in chancery, to which they are made parties by name.

It follows that a decree *in rem* is equally conclusive with a decree *inter partes*; but the persons bound by a decree *inter partes* are only the parties named, while by a decree *in rem*, having been made parties generally to the proceedings, the decree is conclusive upon and binds all possible persons and interests.

⁂

See also the confiscation act passed July 17, 1862, which provided that property of rebels should be seized and applied to the support of the army of the United States. The Legislature evidently understood that the necessary effect of that language as it stood was to forfeit the entire thing, for subsequently by a joint resolution of Congress the effect of the language previously employed was qualified (12 Stat. at Large, 627) which provided that no punishment or proceeding under the act should be "construed so as to work a forfeiture of the real estate of the offender beyond his natural life".

The theory and practice in these proceedings are well laid down in the following cases:

The *Mary Anne*, 1 Ware, 99.
Croudson *vs.* Leonard, 4 Cranch, 437. Opinion of Washington, *J.*
Mankin *vs.* Chandler, 2 Brock, 127. Opinion of Marshall, *J.*
The *Mary*, 9 Cranch. See opinion, p. 144.
The United States *vs.* All the Distilled Spirits, 8 Int. Rev. Rec., 81.
The United States *vs.* Mackoy, 2 Dill, 299.
Woodruff *vs.* Taylor, 20 Vermont, 65.
Gelston *vs.* Hoyt, 3 Wheat, 246.
Attorney-General *vs.* Norstedt, 3 Price, 97.
Smith's Leading Cases, Vol. II., pp. 813, 808 and 622.

A decree in proceedings *in rem* is conclusive not only upon all claims asserted and all questions of fact and law actually raised, but also upon those claims which *might* have been asserted, and upon those questions of fact which *might* have been set up as new matter by way of affirmative defence, and questions of law which *might* have been raised.

Homer *vs.* Fish, 1 Pick., 441.
Imrie *vs.* Castrique, 8 C. B. (N. S.) 405.
Trump *et al.*, *vs.* The Ship *Thomas*, Bees' Reports, p. 86.

IV.

Whatever, as a matter of ultimate reason, may be the true construction of the forfeiture declared against the land by the 19th section of the Act of 1868, it is not a competent subject of inquiry in this action.

The decree in the proceeding to enforce the seizure declared a forfeiture of the land in its entirety; no particular interests in the thing were made the subjects of condemnation, leaving other interests untouched; but, according to the plain use of language, the thing itself was condemned. That decree is conclusive upon all questions which might properly have been raised in the seizure proceeding, and cannot be attacked collaterally.

In this action the plaintiff cannot inquire either into errors of fact or errors of law committed in that proceeding, even though the decree of forfeiture took its form and color from those errors.

The decree is none the less conclusive, even if erroneous. The error is only available on review in that very proceeding.

If the construction of the statute was necessarily drawn in question in the proceeding, the construction given by the Court and enforced by the decree must be taken to be the true construction for the purpose of that proceeding. In this action the Court cannot inquire what the decree *ought* to have been in the condemnation proceeding, or what ought to have been the construction of the statute upon which the decree proceeded.

The case of Kemp *vs.* Leslie, 5 Cranch, 172, is a case which is not only an authority in point, but states well the principle upon which the rule is founded.

Collateral inquiry into the validity or legality of judgments is restricted to questions of jurisdiction.

It is admitted that in a personal judgment the Court must have had jurisdiction of the person; that in a proceeding *in rem* it must have had jurisdiction of the thing; that in divorce causes it must have had jurisdiction of the status of the parties, and that in all forms of action some sufficient notice, actual or constructive, must be given to the persons interested. So, too, in all forms of action the Court must have jurisdiction of the subject matter of the controversy, as, for instance, a Probate Court cannot decree divorce. So, too, the forms of procedure must be judicial and not arbitrary.

All these various matters are concededly jurisdictional, and no difficulty can arise in passing upon them. But there are questions more difficult to determine where, for instance, the Court has jurisdiction to decree certain relief in suitable cases, but upon the face of the record it appears affirmatively that the allegations or findings of fact upon which the decree is based are inconsistent with the relief granted, or that they establish such a case as would not legally justify the relief granted, it is sometimes hard to say whether the judgment or decree is merely erroneous or is void for want of jurisdiction to make it.

So also, where the relief or remedy sought is given by statute and the Court having jurisdiction of the subject matter is called upon to construe the statute and determine precisely what relief must be given under it, there may be difficulty in determining whether, if the Court give relief which the statute colorably justifies but which as matter of ultimate reason and true construction is not really authorized by the statute, ~~is~~ the mistake is mere error of the Court having jurisdiction to decide that every question, which must stand for the true construction in that case until corrected by a Court of review, or ~~is it~~ whether it is an act without jurisdiction which may be impeached collaterally wherever called in question.

In the former of the two cases last stated the true rule would seem to be, that where the Court had jurisdiction of the subject matter and is called upon by the obligation of that jurisdiction to exercise its judicial function to determine whether certain facts constitute the case to which a statutory provision was intended to apply and it decides that they do constitute such a case and decrees relief accordingly; if the decision as matter of ultimate reason is erroneous it will nevertheless be merely error and not an act without jurisdiction, *provided that the question passed upon was a substantial question necessarily drawn in issue in the case which required the exercise of a judicial judgment, and there was color for the view taken by the Court.*

But if the question was not necessarily drawn in issue or if there were really no substantial question to pass upon and no colorable reason for the view taken by the Court the decree would be in excess of jurisdiction because the judicial function was not called into action.

In the second case, where the error consists in a mistaken construction of a statute and a decree is based thereon which, as matter of ultimate reason, a true construction does not warrant, there is no reason why the same rule should not apply. For if there is a real substantial question as to the construction of the statute and it is necessarily drawn in issue in order to determine the proper decree to be made, the judicial function of the Court is called into action and if it render a decision for which colorable ground is found in the statute there is no reason why the decision should not be conclusive for the purposes of that particular case.

The counsel for the plaintiff cited Bigelow *vs.* Forest, and other of the confiscation cases in the Court below, and doubtless relies upon them here.

But there was nothing decided in those cases that conflicts with the rule contended for by the defendant.

In the confiscation cases the decree attacked, purported to condemn certain land in entirety for acts of rebellion committed by the owners, whereas the statute enacting the forfeiture expressly provided that no punishment or proceeding under the act should be "so construed as to work a forfeiture of the real estate of the offender beyond his natural life." The Court held, that if the decree were taken to intend a forfeiture of more than the life interest of the rebel owner, it would be void as a plain disregard of the statute, ~~when~~ as there could be no question ~~as to~~ of its meaning.

In those cases there could have been no substantial question, as to the meaning of the joint resolution referred to; there was nothing to construe—nothing to call for the exercise of the judicial function of the Court. In view of the joint resolution, there was not the slightest color for holding that anything more than a life interest could be forfeited, and if the Court had attempted to decide otherwise, it would have been a clear usurpation outside of the issues in the case, and outside of any real question of law that could arise in applying that statute.

So also in the Lange case, 18 Wall, 178.

The Court was authorized by statute to impose a sentence of fine *or* imprisonment, and the Court imposed both.

There never could have been any real question as to whether the words "*fine or imprisonment*" meant both fine and imprisonment; there was no color for such construction; such a view could only arise, not from a judicial consideration of the statute, but from a failure to consider it at all, and the act could properly have no judicial character whatever.

So also in Munday *vs.* Vail, 5 Vroom, 418, cited by the plaintiff, where the Court had undoubtedly general equity power to make the decree, provided a suitable case had been made out, but it appeared on the face of the record that the decree was improper under the circumstances, and had not even a colorable case to support it. The determination of the Chancellor evidently was given not as a result of judicial consideration of the facts and of the decree appropriate to the case, but in the absence of judicial consideration, and as the Supreme Court put it through in advertence.

None of the cases cited by plaintiff on the hearing below are inconsistent with the position that where a substantial question of law is presented which invokes the judicial functions of the Court, either to determine the application of statutory provisions to given facts, or to determine whether a statute will admit of a given construction under any state of facts applicable, the decision of the question is within the jurisdiction of the Court, and is conclusive in the particular case until reviewed in that very case.

This is the only principle upon which the doctrine in Bigelow *vs.* Forrest can be reconciled with the case of Kemp vs. Leslie 5 Cranch 172 before cited. In the latter case, the land of a married woman had been forfeited by proceeding *in rem* under a statute of the State of New Jersey, and she afterwards brought ejectment to recover the property, alleging that the decree of condemnation was void because the statute of New Jersey gave no right to forfeit land in the case set forth in the record, the United States Supreme Court held that even though the statute properly construed, gave no right of forfeiture in such case, yet having been construed judicially in the proceeding itself, the decree was conclusive and could not be attacked collaterally.

In some of the books it is said that where the Court has power under the statute to make a decree upon a given state of facts, if it makes the decree upon a state of facts not contemplated by the statute, yet the decree is conclusive, because the Court had power to make such a decree, and to pass upon the facts which should entitle to it. But that where a statute does not give power to make a given decree in any case, but the Court, under a mistaken but colorable construction, makes the decree upon a state of facts to which the construction adopted would be applicable the decree is void for want or jurisdiction. It is difficult to find any substantial theory upon which the Court could have jurisdiction in the first case if it were wanting in the second. There seems to be a vague idea that if a Court is authorized by statute to make a given decree in a specified case, and applies the statute to the wrong case, the jurisdiction in some way remains and is transferred to the wrong case, and the act of the Court is merely error and not jurisdictionally defective.

But statutes do not exist abstractedly, but have relation to the cases for which they are provided. If a statute cannot be sustained as applicable to a given case taken separately, it cannot be sustained as applicable to it, because it is applicable to some other case.

Every statute is made for some particular case, and to apply it outside of that case, is as much an excess of power as if the statute did not exist.

If the jurisdiction of the Court can be sustained in making the mistaken application of the statute, it will be because the case to which the Court erroneously makes the statute applicable bears such colorable resemblance to the case to which as matter of sound construction the statute was intended to apply, that there was presented to the Court a substantial question of construction which necessarily invoked the judicial function of the Court for its determination.

No principle can be stated to justify the application of the provisions of a statute to a case to which it was not intended to apply, as a proper exercise of jurisdiction, and at the same time nullify an erroneous interpretation of a statute confessedly applicable to the case presented as an act in excess of jurisdiction. In both cases there is a misapplication of the statute; in both cases the error is an error of law, and substantially involves the construction of the statute; in both cases the Courts make an application of the statute not contemplated by its provisions by which an effect is given to it which the legislature did not intend it should have. If there is an excess of jurisdiction in one case there is also in the other. The real test in both cases must be whether there is a substantial question of construction drawn in issue, and whether the Court in passing upon it renders a decision which is colorably based upon the Statute.

The Court is compelled to exercise its judicial function upon every substantial question drawn in issue, and its decision is conclusive because it is the judicial determination of a question which it has jurisdiction to determine. It is a contradiction in terms to say that a Court has jurisdiction to determine a question, but that its determination can be only one way, or it will be an excess of jurisdiction.

In the decree in the seizure case, the validity of which is here questioned, the construction of the 19th section of the Laws of 1868 was involved.

The question was a substantial one, the plain language of the 19th section on its face necessarily implied a forfeiture of the thing in its entirety, that view was at least colorable.

No provision can be found elsewhere in the Statute which expressly declares otherwise. The argument of the plaintiff against the construction involved in the decree consists of inferences and analogies derived from nice comparisons of different parts of the Act. It cannot be doubted that the judicial function was necessarily exercised to determine a question which was not only substantial but was an exceedingly nice and close question of law. If the rule is as claimed by counsel for the plaintiff, the construction involved in the decree of condemnation was a proper exercise of jurisdiction, and cannot be attacked collaterally.

In the People *ex rel.* Tweed, 60 N. Y., ~~the Court lay down~~ the distinction ~~here criticized, but it seems~~ laid down seems artificial and arbitrary and involves inconsistencies of reasoning that should prevent its extension. That case also may be peculiar in the fact that it was a case where personal liberty was involved, and the Court was doubtless astute to find a theory which should remedy the injustice that had been done.

V.

But even if the decree in the condemnation proceeding is not conclusive as to construction of the statute, but that question is open to inquiry collaterally in the case at bar.

And even though the true construction of the 19th section be that the land is to be forfeited only in case it is the property of the distiller, nevertheless, the Government having seized the land and distillery for forfeiture as land of Charles L. Sicher, the lien claimants were bound to intervene in that very proceeding, and assert their several claims against the land. The proceeding was a proceeding *in rem.* The Court had jurisdiction of the subject matter; it had jurisdiction to grant a decree forfeiting the entire property in case it belonged to Charles L. Sicher, free from conflicting claims. The Court sat for the very purpose of determining whether that was the fact, or whether there were other interests outstanding which ought to be preserved.

That is the very object of a proceeding *in rem.* Claimants are not to be notified personally that their several interests are affected, nor is it necessary that the interests to be affected should be specifically described, and the relief sought against each stated.

The monition is a general notice to all persons to come in and assert their respective interests, whatever they may be, in order that the Court may adjudicate upon them. If no one intervenes and alleges a conflicting interest in the thing, the conclusive presumption arises that there are no other interests in the thing other than those that affirmatively appear in the record, and the Court proceeds to adjudicate upon those interests as being all the interests in the thing.

If the decree of the Court is such as would be a competent exercise of jurisdiction, if there were no interests other than those before it, then, for the purposes of that case, it is conclusive, and claimants cannot, in a collateral proceeding, establish that there were other interests which made the decree inappropriate. They are taken to have had their day in Court, and are concluded as to the question of the existence of their interests.

That point was well decided in United States *vs.* Mackoy, 2 Dill. (C. C. R.), 299. The Court declined to pass upon the question of priority on the ground that the claimants were concluded as to the very existence of their liens so far as the title to the thing was concerned and were remitted to the proceeds if they came in before final distribution.

To like effect is the language of Judge Nixon in his opinion in the case at bar (see record, p.):

(4.) "But whether this be so or not, I am of the opinion that under the proceedings *in rem* to give effect to the forfeiture, all persons claiming liens against the *res*, were notified to come in and establish their liens; that after seizure by the marshal the property was in possession of the Court for that purpose; that whilst by such proceedings the lien upon the *res* was divested by the sale, it attached at once to the fund in Court which was realized by the sale; and that the claimants mistook their remedy by going into the State Courts to enforce their liens, and should have applied to the District Court, where the property was to be allowed to participate in the proceeds of its sale, to the extent of their claims, and that if their failure so to do has resulted in their loss, no blame can attach to the Government, which afforded them ample opportunity for a judicial consideration of their claims.

Whether the liens attached to the premises notwithstanding the forfeiture, it is not necessary here to decide. The question was raised and discussed by Judge Dillon in the case of the United States *vs.* Macoy, 2 Dill., 299, and left by him unadjudicated.

Where no person intervenes in the proceedings *in rem* to contest the claim of the Government for a forfeiture, or the claim of the libellant for the satisfaction of his debt, as the case may be, a decree is rendered, adjudging the thing to be guilty of the offence charged, and condemning it as forfeited to the use of the Government, in the one case, or adjudging it to be liable for the claim of the libellant, if established, in the other case. The Court then orders the thing to be sold, and the proceeds thereof to be brought into Court, to be there distributed, according to law, amongst such persons as may establish their claim to such proceeds, according as their priority may appear.

The proceeds arising from such sale are, accordingly, paid into Court, and take the place of the thing in relation to claims which existed against the thing prior to the sale. The claims are, by the sale, shifted from the thing to the proceeds.

Such sale purges and divests the thing of all liens, claims and encumbrances whatsoever, and imparts to it a new legal existence.

The purchaser at such sale acquires a clear, absolute and unincumbered title to the thing.

Coote, Practice of Admirality, p. 129,
Hughes *vs.* Cornelius, 2 Shower, 242.
The *Clara* Swabey, p. 1, Opinion of Dr. Lushington.
The *Mary Ann*, 1 Ware, 99.
The Attorney-General *vs* Norstedt, 3 Prince, 97.
Imrie *vs.* Castrique, 8 C. B. (N. S.), 406.
Trump *et al.*, *vs.* The ship *Thomas*, Bees' Reports, p. 86.
Williams *vs.* Amroyd, 7 Cranch, 423.
The Steamboat *Raritan vs.* Smith, 10 Missouri, 527.
The Steamboat *Rover vs.* Stiles, 5 Black (Ind.), 483.
The Globe, 2 Blatch., 427.

The effect of a proceeding in *rem* to purge title would be ~~is of course~~ limited to those proceedings where the Court has jurisdiction upon some state of facts to dispose of the entire thing. If the Statute proceeded under was limited so that the Court had no authority upon any state of facts to grant the relief awarded by the decree then the sale necessarily could not purge the entire thing of all claims and interests; it could only purge it of claims attached to the particular *res* or limited interest upon which it had authority under all possible circumstances to adjudicate. That was the case in the confiscation cases. There the Statute gave no authority to forfeit the entire thing, even if the offender were the owner in fee and there were no interests in the thing other than his title.

No adjudication of the Court that there were no interests other than that of the offender, ~~and that his interest was co-extensive with the thing in its entirety~~ could give the Court jurisdiction to decree a forfeiture of more than his life interest. Hence, no jurisdiction of the thing in its entirety ever attached or could attach, because all possible offenders having interests in the property could forfeit collectively only their *life* interests, and not the entire thing, and there must still be remainderman as to whose interests the Court had no jurisdiction.

In the case of The United States *vs.* Emholtz, cited by plaintiff, the claimants intervened and established the existence of their liens in the condemnation proceeding, and the Court was called upon to determine the question of priority in that very proceeding. In the condemnation proceedings which are called in question in the case at bar the claimants failed to intervene or establish the existence of their claims.

VI.

But, even if it be conceded, for the sake of argument, that the mechanics' liens under which plaintiff claims title were not cut off by the proceedings for condemnation and sale thereunder, nevertheless, the judgments rendered upon those liens were void as to the premises in question, and the Sheriff's deed thereunder to plaintiff conveyed no title, because the lien claims were not filed or enforced against the owner of the premises, as the statute requires.

Under the mechanics' lien law of New Jersey, the claimant must state in his notice of lien the name of the owner of the property proceeded against.

Nixon's Digest, p. 572, sec. 6.

The decisions have uniformly interpreted this provision of the statute, to require that, where there has been a transfer of the property between the time of doing the work or furnishing the materials, and the time of filing the claim, the name of the person who owns the property at the time the claim is filed should be stated, and he should be made a party to the subsequent proceedings.

Edwards *vs.* Derrickson, 4 Dutch., 40.
Derrickson *vs.* Edwards, 5 Dutch., 468.
Robins *vs.* Bunn *et al.*, 5 Vroom, 322.
Phillips on Mechanics' Liens, p. 537.

This is conceded by counsel for plaintiffs.

In both the lien claims under which the plaintiff claims title, this plain provision of the statute was violated.

The owner of the premises at the time of filing the lien claims was the United States, then actually in possession of said premises, which they had seized, claiming ownership by reason of a forfeiture for violations of the revenue laws.

In the case of one of the liens claims, there had been a judicial ascertainment of the forfeiture and of the ownership of the government, by the United States District Court, before such claim was filed.

The information filed in pursuance of such seizure and before the filing of either of the lien claims, alleges the commission of offences upon the premises in question, against sections 7, 19 and 44 of chapter 186, of the Act of Congress of July 20th, 1868, entitled "An Act imposing taxes on distilled spirits and tobacco, and for other purposes" (besides other sections of the same and other acts of Congress), for which offences the statute provides that there shall be an absolute forfeiture of the property on which the offences are committed, immediately upon the violation of the law.

The title to the property, therefore, passed to the United States at the time when the unlawful acts were committed and prior to the seizure.

The United States *vs.* 1960 Bags of Coffee, 8 Cranch, 398.

Henderson's Distilled Spirits, 14 Wall., 44.

Scott *vs.* Shearman, 2 Wm. Blackstone, 976.

The United States *vs.* 56 Barrels of Whiskey, 1 Abb. [U. S.], 93.

The *Mary Celeste*, 2 Lowell, 354.

The United States *vs.* The Bark *Reindeer*, 2 Clifford, 57.

Fontaine *vs.* Phoenix Insurance Co., 11 John [N. Y.], 293.

Kennedy *vs.* Strong, 14 John [N. Y.], 128.

The lien claims, having been filed after the commission of those acts and after the seizure, ought to have been filed against the United States, the owner at the time of said filing, as required by the statute.

The injustice which would follow from allowing a claim filed and proceedings taken against one who had parted with his interest, to be effectual against the real owner, is illustrated by this case, where Charles L. Sicher, against whom these lien claims were filed and proceedings taken, had departed from the State and from the country, not caring to defend property in which he had no longer had any right, title or interest.

VII.

The United States were not made parties to the lien claims proceedings; hence, upon general principles of law, irrespective of the statute, neither the United States, nor the defendants claiming under them, are bound by the judgments therein.

Thompson *vs.* Whitman, 18 Wall., 457.

Pennoyer *vs.* Neff, 5 Otto (95 U. S.), 714.

Proceedings upon mechanics' lien claims, under the New Jersey statute, are proceedings *inter partes*, and only those made parties are bound by the judgments therein.

The distinction between such proceedings and proceedings strictly *in rem* is plain.

In the former case throughout the entire proceedings, the possession of the property remains with the previous occupants. There is no custody by the Court to give all persons interested, notice that such proceedings are pending. Their only means of notice is the record itself, and where they are not parties to the record, either by name or by general designation, they are under no obligations and it is doubtful whether they have the right to appear in the proceedings. And where, in addition, no notice by process of the Court is in any way addressed to them, they can have no such knowledge of the proceedings, nor opportunity to be heard, as would give the Court jurisdiction to pass upon their rights. See opinion of Dixon, *J.*, in Jacobus *vs.* Mutual Benefit Co., Vroom, pp.

In a proceeding *in rem*, the Court takes the thing itself into custody, all persons having any interest in the thing are presumed to know its condition, and in whose custody it is held; yet even in this case it is customary to give a general notice of the proceedings by publication of a monition. All the world are parties, and every one claiming an interest in the thing is allowed to intervene for the protection of that interest.

Woodruff *vs.* Taylor, 20 Vermont, 65.
Smith's leading cases, vol. ii., p. 813, and 808 and 622.
Hill & Conn *vs.* The Golden Gate, 6 Am. Law Reg. (O. S.), 273.
Holland and others *vs.* Jones, 6 Indiana, 495.
Phillips on Mechanics' Liens, p. 537.
Marvin *vs.* Taylor, 27 Indiana, 73.

VIII.

But it may be urged that these lien claim proceedings are proceedings *in rem*, and that the United States were in fact made parties as well as all other persons claiming an interest in the thing, although not expressly named in those proceedings. The cases cited under Point IV show this argument to be unsound on principle and on authority; but conceding, for the sake of argument, that those proceedings were *in rem*, they would, nevertheless, be void as respects the interests of the United States and of the defendant claiming under the United States in the property in question, for the reason that the State Court in which those proceedings were taken did not, and could not, at the time those proceedings were instituted, acquire jurisdiction over the *res*, because the *res* at that time was in the actual custody of the United States Court proceeding *in rem* for a forfeiture, as above stated, and remained in such custody until the decree of condemnation and forfeiture was pronounced, and the property sold thereunder and delivered to the grantee of the United States.

In a proceeding *in rem* the Court acquires jurisdiction by taking the thing itself into custody, and while one Court has jurisdiction and custody of the thing proceeding *in rem*, no other Court can acquire jurisdiction over it in a like proceeding.

The *Oliver Jordan*, 2 Curtis (U. S. C. C. R.), 414.
The Ship *Robert Fulton*, 1 Paine (U. S. C. C. R.), 620.
Hagan *vs.* Lucas, 10 Peters, 400.

By Points IV and V plaintiff is placed in a dilemma.

For, if the proceedings under which he claims are *inter partes*, only those who were made parties and their privies are bound by the judgments, and the United States, being neither parties nor privies, are not, nor are their grantees, bound by the judgments mentioned.

But if it be insisted by, plaintiff that said proceedings are *in rem*, to which all persons having an interest in the thing are parties, then the judgments are equally void, because the State Court never acquired jurisdiction over the thing, it being in the custody of the United States Court.

IX.

Furthermore, even if the United States had been made a party to the lien claim proceedings, they could not have been deprived of their interest in the property in question, unless they had voluntarily appeared in those proceedings, and had submitted themselves to the jurisdiction of the Court.

The United States are a sovereignty, and cannot be sued nor be deprived of their property by judicial process, without their consent. No distinction exists in this respect between suits against the government and suits against its property. In neither case, can such a suit be maintained, and especially where, as in the case at bar, the United States, by its officers, are in actual possession of the property sought to be proceeded against.

Briggs *vs.* Light Boats, 11 Allen, 157.
The Siren, 7 Wall, 152.
Carr *vs.* The United States, 8 Otto, 433.
Reeside *vs.* Walker, 11 Howard (U.S.), 272 and 290.
Hill *vs.* The United States, 9 How. (U. S.), 386.
The United States *vs.* McLemore, 4 How. (U. S.), 286.

X.

But the lien claimants were not deprived of an opportunity to be heard upon their claims. They had their day in Court. The United States District Court was open to them and invited them and all others claiming an interest in or lien upon the property in question to intervene in the condemnation proceedings, and to present their claims for adjudication to that tribunal.

Instead of availing themselves of the opportunity thus offered, those claimants chose to attempt, by hostile proceedings in the State Court, to deprive the United States Government of property of which it was then actually in possession, asserting ownership as against the whole world; and that, too, without making that government a party to those proceedings, or giving it any opportunity to be heard in defence of its rights.

No such proceedings can be effectual for any purpose, nor can any rights be based thereupon.

Tenth.—Being an action of ejectment, the plaintiff must recover on the strength of his own title. The record of the proceedings in the State Court of New Jersey to enforce the mechanics' lien shows that the judgment, as respects the property in dispute, was void for the reason that there was no personal service of process on Sicher, and the statute requires the proceeding to be taken against the owner of the property at the time when the lien claim is filed. Such owner is a necessary defendant without which no lien can be established and no title can pass. The present proceeding was against the former owner, but not the then owner of the property, namely, the United States. The judgment of the State Court establishing the debt against the former owner and builder was wholly inoperative for want of jurisdiction, was *res inter alias acta* as against the United States and could originate no title adverse to the United States.

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Charles S. Hamilton & Co., Printers, 12 Barclay St., N. Y.

Supreme Court of the United States.

No. 69, October Term, 1884.

AUGUST HEIDRITTER, *Plaintiff in Error.* *vs.* THE ELIZABETH OIL CLOTH COMPANY, *Defendant in Error.*	*In Ejectment. On Writ of Error to the Circuit Court of the United States, for the District of New Jersey.*

Supplement to Argument for Defendant in Error.

Point in Rebuttal.

The *Seventh Point* raised on the brief for plaintiff in error is not well taken. The allegations of the information imply that the distillery stands on the lot of land described. In conveyancing it is customary often to describe property as "that certain house and lot situate, lying and being, &c.," the plain meaning being that the house stands on the lot. This is, in substance, the allegation in the information, viz.: "The distillery and all that tract "or parcel of land situate in the City of Elizabeth, "in the County of Union and State of New Jersey, "beginning, &c." The language implies that the boundaries of the land include the distillery building.

Nothing appears upon the record to show affirmatively that the distillery did not stand on the land forfeited, and if that was a fact essential to the forfeiture, the decree raises the presumption that that fact was properly before the Court, and the decree is conclusive on that point. The objection goes merely to the regularity of the proceeding and not to the jurisdiction of the Court to make the decree, and irregularities can be availed of only in the proceeding itself, and not when a decree is called in question collaterally. If the question had been raised in the proceeding itself, the Court might have allowed an amendment; or if no objection had been made, could have taken proof of the fact without amendment. The objection would have been extremely technical, especially as it appears from the language of the lien claim (page 21, fol. 58 of the record.) that the distillery really did stand on the land in question.

Kemps, Lessee, *vs.* Kennedy, 5 Cranch, 172.

Miller *vs.* United States, 11 Wall., 268.

See opinion, pp. 299 and 300, and cases cited, and opinion by Mr. Justice Field, where it is stated, that if the record does not, on its face, show *affirmatively* a state of facts which makes the decree bad as an improper exercise of power, it must be presumed that the Court acted competently, and that the necessary facts were in some way established.

See, also, as to presumptions in favor of a judgment called in question collaterally,

In Den. Vanderveere, *vs.* Gaston, 4 Zabriskie, 818.

Dean *vs.* Thatcher (Ct. Errors N. J., 1865), 3 Vroom., 470.

Hatch *vs.* Rochdean, 18 N. Y., 86.

In addition, the objection stated in the Seventh Point of the plaintiff in error was not taken before the Court below. The counsel for plaintiff there objected to the admission of the record of the condemnation proceedings stating special grounds of objections with great particularity; but the ground now stated in the Seventh Point was not one of those assigned; it therefore must be taken to have been waived.

See bill of exceptions, record page 10, fol. 28, page 11 and page 12.

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Note —*A memorandum of all the cases above cited was furnished to the counsel for plaintiff in error on Friday morning, Nov. 7th,* 1884, *with a statement that they would be used in reply to their Seventh Point.*